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626 This Vol. should have been 626
No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME I.

(Pages 1 to 400, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

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**Upon Appeal from the United States Circuit Court
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*United States Circuit Court of Appeals for the Ninth
Circuit.*

UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (Defend-
ants),

Respondents.

[Names and Addresses of Attorneys.]

PEYTON GORDON, Esq.,

Special Assistant to the Attorney General,
Washington, D. C.
Boise, Idaho.

A. B. JACKSON, Esq.,

Minneapolis, Minnesota.

Solicitors for Appellant.

C. T. BUNDY, Esq.,

Eau Claire, Wisconsin.

A. A. FRASER, Esq.,

Boise, Idaho.

Solicitors for Respondents.

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINKAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER, and HOR-
ACE S. RAND,

Defendants.

Bill in Equity.

To the Honorable Judges of the Circuit Court of the
United States, for the District of Idaho:

Charles J. Bonaparte, Attorney General of the
United States, for and in behalf of the United States
of America, complainant, brings this Bill of Com-
plaint against the Barber Lumber Company, a cor-
poration, organized and existing under the laws of
the State of Wisconsin, James T. Barber and Sum-
ner G. Moon, citizens and residents of the State of
Wisconsin, William Sweet, a citizen and resident of
the State of Oregon, John Kinkaid, a citizen and
resident of the State of Nevada, Louis M. Pritchard,
a citizen and resident of the State of California,
Patrick H. Downs, a citizen and resident of the State
of Idaho, Albert E. Palmer, formerly a citizen of the
State of Washington, but whose residence is now un-
known, and Horace S. Rand, a citizen and resident of

the State of Iowa, and thereupon complains and says:

FIRST.

That prior to the acts hereinafter complained of, the complainant was the owner of the lands hereinafter described, the said lands constituting a part of the public domain and situated within the State and District of Idaho.

That by an Act of Congress of the United States, entitled, "An Act for the sale of Timber Lands in the States of California, Oregon, Nevada, and in Washington Territory," approved June 3, 1878, as amended and extended to all public land states by the Act of Congress of August 4, 1892, it was provided among other things in substance that surveyed public lands of the United States within the public land states, valuable chiefly for timber, but unfit for cultivation might be sold to citizens of the United States or persons who had declared their intention to become such, in quantities not exceeding 160 acres to any one person or association of persons, at the minimum price of Two Dollars and Fifty Cents (\$2.50), per acre;

It was further provided in said Act as follows:

"That any person desiring to avail himself of the provisions of this Act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited;

contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself”;

—which statement was required by said Act to be verified by the oath of the applicant before the register or receiver of the land office within the district where the land was situated;

And said Act further provides that:

“If any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.”

And said Act further provides that after the expiration of 60 days publication of said application,

“The person desiring to purchase shall furnish to the register of the land office satisfactory evidence,
* * * that the land is of the character contem-

plated in this Act unoccupied and without improvements other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and receiver, * * * the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon.”

Said Act further provided that effect should be given to its provisions by regulations to be prescribed by the Commissioner of the General Land Office.

SECOND.

That pursuant to the authority given by said Act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said Act, among other, the following:

That after the expiration of the 60 days publication, the person desiring to purchase the land described in his application to purchase should, under oath, make answer to certain questions as follows:

“Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may, inure, in whole or in part to the benefit of any person except yourself”?

And:

“Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?”

And:

“Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?”

Also the following:

“Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?”

And:

“Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?”

THIRD.

That the said defendants, the Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, intending to defraud complainant out of large tracts of its valuable public lands, did combine, conspire, confederate and agree together and with the parties hereinafter named, and other parties not necessary to be named and did devise a plan and method whereby unlawfully and fraudulently, by means of fraud, perjury and subornation of perjury, and other unlawful methods, they might

unlawfully and fraudulently procure for themselves and for their use, benefit and pecuniary advantage, large quantities of said public lands.

Said unlawful and fraudulent means consisted in procuring persons to avail themselves of the provisions of the Act of Congress hereinbefore referred to, by filling the written statement, and doing the other things required by said Act and the regulations of the Commissioner of the General Land Office, applicable to said proceedings, under an agreement then and there and theretofore had and entered into between said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, and divers of said persons, wherein and whereby they, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, agreed to purchase said lands described in the respective statements and applications of said applicants as soon as said applicants should secure title thereto; and in divers other instances, said unlawful and fraudulent means consisted in procuring persons to avail themselves of the provisions of the Act of Congress hereinbefore referred to, by filing the written statement, and doing the other things required by said Act and the regulations of the Commissioner of the General Land Office, applicable to said proceeding, under an agreement then and there and theretofore had and entered into between said

Barber Lumber Company, a corporation, James T. Kinkaid, Louis M. Pritchard, Patrick H. Downs, Barber, Sumner G. Moon, William Sweet, John Albert E. Palmer and Horace S. Rand, and divers of said persons, wherein and whereby they, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, agreed to furnish or procure to be furnished and supplied to said applicant the amount of money necessary to pay all expenses in connection with making said filing and procuring title to said land under said Act, including the sum necessary to pay for said land; whereupon said applicant, as soon as he should obtain title to said lands from the United States, was to deed the said lands to said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, or either of them, or to some person designated by them or either of them, and the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, were thereupon to pay or procure to be paid to said applicant a sum theretofore, at the making of the agreement aforesaid, decided upon and promised to be paid.

FOURTH.

That pursuant to said unlawful and corrupt conspiracy and agreement, and to carry out and effect

the object and purpose thereof, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William, Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand did unlawfully, falsely, fraudulently and corruptly induce and procure Nellie J. Thompson, John G. McDonald, Dean West, Louise B. West, Daniel P. Woodmore, Charles Nelson, William Pearson, Margaret Pearson, Leslie Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, George M. Cutler, Thaddeus M. Glass, Harry L. Clyne, Louis Nibler, John U. Cassell, Oliver Johnson, Edward Brisbin, William W. Abrams, Samuel C. Bowen, Homer C. Granger, Lewis K. Burns, John M. Byro, William F. Snow, Lewis L. Folsom, Joseph M. Hollister, Leonora Hollister, Charles A. Walker, Henry F. Benedix, Uriah F. McBurney, William J. Marcum, Samuel Marcum, Walter L. Harrison, James O. Baker, Henry Humphrey, Charles W. Balentine, M. Laeta Eagleson, Norman H. Young, Frank B. Nickerson, Lettie L. Stephenson, Martin S. Stephenson, Gertrude A. Lewin, William M. Lewin, Altha Gillum, Mack Gillum, John R. Gary, Frank Lane, Uriah Flint, David G. Thompson, Samuel Greig, Sarah Greig, Gustav H. L. Rothine, William F. Roberts, Patrick H. Downs, John C. Monroe, Mary A. Monroe, James H. Hamilton, Michael Koppas, Jennie E. Thompson, Albert B. Ewing, Cora B. Ewing, Bertha Martin, Edward J. Phelps, John Bates, William H. Martin, Henrietta B. Martin, Jens Olson, Evelyn O'Farrell, Oliver Johnson, Charley Patterson, George S. War-

ren, George H. Ensworth, William C. Lane, Ery A. Wilmot, Harry S. Worthman, Edward E. Butler, Wilbert F. Wilmot, John D. Franch, Adella C. Brookhart, Homer G. Allen, Walter S. Walker, Joseph Franch, Louis M. Pritchard, William Judge, Smith Barker, Sedgwick Hoover, Henry Rics, John W. Rose, Frederick Thurman, Victor L. Eoff, Harry S. Worthman, Charles W. Balentine, Burt Resser, Esward A. Lockhart, Frank R. McDonald, Luella Jaycox, Orlin R. Jaycox, Benjamin R. Allen, Samuel E. Vance, John J. Hobbs, John J. Powley, Louise E. Butler, Elvie M. Butler, Alice Fordney, Henry Bayhouse, Alfred Bayhouse, Frank Bayhouse, George Bayhouse, Moses H. Kempner, Annie E. Kempner, Merritt L. Twogood, Ida Twogood, Delilah Bayhouse, Andrew Hansen, Emerson Sensenig, Lucretia C. Sensenig, Jacob V. Nuebaum, Pearl I. Nusbaum, Benjamin C. Eagleson, Charles H. Eagleson, Harry K. Eagleson, Helen E. Eagleson, George T. Ellis, Mary Thompson and T. S. Thompson, General L. Willhite, Elizabeth Willhite, Emma Bilderback, William F. Noble, Caroline F. Alexander, Charles R. Beckley, Mantie Beckley, Elizabeth Schmelzel, Jennetta B. Cooper, James F. Belk, Arietta H. Stahl, Benjamin E. Stahl, Lena D. Wilson, Walter L. Wilson, Helen Sullivan, Joseph Sullivan, William H. Martin, Henrietta B. Martin, Elma E. Gardner, George W. Butler, Edgar E. Bush, Sonora A. Joplin, Andrew F. Joplin, Walter Joplin, Frank P. Weasel, George M. York, Earl A. Harrington, Samuel S. Horner, Hortense D. Horner, Samuel M. Blandford, Emma Lou

Blandford, Willard C. Austin, Ada V. Austin, Clifton C. Blevin, Susie A. Youngkin, John A. Youngkin, William E. Cavanaugh, William H. Gibbard, Elof Anderson, Emma M. Anderson, Burt T. Parker, Jackson Ownbey, Harrison F. Ownbey, James Ownbey, Mary E. Ownbey, Thomas F. Kelly, John M. Neil, Maud Pitman Neil, Addie G. Gibbard, Edward H. Starn, Mary Starn, Aaron Ownbey, Edward J. Dockery, Eva Hunt Dockery, Irving W. Hart, Fannie R. Hart, Charles S. Kingsley, Caro F. B. Kingsley, Andrew Campbell, Joseph Penrod, Wilbert R. Reeves, Charles B. Farraday, Willis A. Ross, Josie M. Ross, Lorin T. Kinert, Clara M. Snow, Harry S. Noble, George E. Eagleson, Mary J. Eagleson, Anna Fisher, Alexander T. Ellis, Joseph Ehrmanntrant, Margaret M. Ehrmanntrant, Charles W. Clawson, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, John K. Woodburn, William B. Davidson, Rice J. Harbaugh, Margaret Scully, John J. Blake, Dennis Thornton, Albert S. Holcomb, Beulah B. Lake, Abbie M. Briggs, Nathan M. Gardner, Clinton M. Gardner and Alfarata I. Gardner and divers other persons not necessary to be named here, to apply at the United States Land Office at Boise, Idaho, in the land district where said lands are situated, under the provisions of the Act of Congress aforesaid and pursuant to and for the purpose of carrying out the said unlawful, fraudulent and corrupt conspiracy and agreement aforesaid and for the purpose of obtaining title to large tracts of the public timber lands of the United States as aforesaid, did cause, induce

and procure the said parties, and each of them, to appear before the register or receiver of the United States Land Office at Boise, Idaho, and each to make and subscribe, and make oath to the written statement required by said Act of persons desiring to avail themselves of the provisions thereof, and did cause, induce and procure the said persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he, the applicant, did not apply to purchase the land described in his said statement, on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States Land Office.

That, thereafter, pursuant to said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof and to carry out and effect the object and purpose thereof, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, did induce and procure the persons hereinbefore named, and each of them, to appear before the Land Office of the

United States at Boise, Idaho, and to answer certain questions hereinbefore in this complaint set out, prescribed by the Commissioner of the General Land Office, pursuant to the authority contained in the Act aforesaid and each of said persons then and there by the procurement of the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard Patrick H. Downs, Albert E. Palmer and Horace S. Rand, did answer said questions in substance and to the effect that he had not sold or transferred his claim to the land for which he made application to purchase since making his sworn statement, or had not directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself and that he made his entry in good faith for the appropriation of the land exclusively to his own use and not for the use or benefit of any other person, that no other person than himself, nor any firm, corporation or association had any interest in the entry which he was then making, or in the land or in the timber thereon, that he paid out of his own individual funds all the expenses in connection with making said filing, and that he expected to pay for the land with his own money.

FIFTH.

That the statements so made by the said Nellie J. Thompson, John G. McDonald, Dean West,

Louisa B. West, Daniel P. Woodmore, Charles Nelson, William Pearson, Margaret Pearson, Lelie Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, George M. Cutler, Thaddeus M. Glass, Harry L. Clyne, Louis Nibler, John U. Cassell, Oliver Johnson, Edward Brisbin, William W. Abrams, Samuel C. Bowen, Homer C. Granger, Lewis K. Burns, John M. Byro, William F. Snow, Lewis L. Folsom, Joseph M. Hollister, Leonora Hollister, Charles A. Walker, Henry F. Benedix, Uriah F. McBurney, William J. Marcum, Samuel Marcum, Walter L. Harrison, James O. Baker, Henry Humphreys, Charles W. Balentine, M. Leata Eagleson, Norman H. Young, Frank B. Nickerson, Lettie L. Stephenson, Martin S. Stephenson, Gertrude A. Lewin, William M. Lewin, Altha Gillum, Mack Gillum, John R. Gary, Frank Lane, Uriah Flint, David G. Thompson, Samuel Greig, Sarah Greig, Gustav H. L. Rothine, William F. Roberts, Patrick H. Downs, John C. Monroe, Mary A. Monroe, James H. Hamilton, Michael Koppas, Jennie E. Thompson, Albert B. Ewing, Cora B. Ewing, Bertha Martin, Edward J. Phelps, John Bates, William H. Martin, Henrietta B. Martin, Jens Olsen, Evelyn O'Farrell, Oliver Johnson, Charley Patterson, George S. Warren, George H. Ensworth, William C. Lane, Ery A. Wilmot, Harry S. Worthman, Edward E. Butler, Wilbert F. Wilmot, John D. Franch, Adella C. Brookhart, Homer G. Allen, Walter S. Walker Joseph Franch, Louis M. Pritchard, William Judge, Smith Barker, Sedgwick Hoover, Henry Rics, John W. Rose, Frederick Thurman, Victor L. Eoff, Harry S. Worthman,

Charles W. Balentine, Burt Resser, Edward A. Lockhart, Frank R. McDonald, Luella Jaycox, Orlin R. Jaycox, Benjamin R. Allen, Samuel E. Vance, John J. Hobbs, John J. Powley, Louise E. Butler, Elvie M. Butler, Alice Bordney, Henry Bayhouse, Alfred Bayhouse, Frank Bayhouse, George Bayhouse, Moses H. Kempner, Annie E. Kempner, Merritt L. Twogood, Ida Twogood, Delilah Bayhouse, Andrew Hansen, Emerson Sensenig, Lucretia G. Sensenig, Jacob V. Nusbaum, Pearl I. Nusbaum, Benjamin C. Eagleson, Charles W. Eagleson, Harry K. Eagleson, Helen E. Eagleson, George T. Ellis, Mary Thompson and T. S. Thompson, General L. Willhite, Elizabeth Willhite, Emma Bilderback, William F. Noble, Caroline F. Alexander, Charles R. Beckley, Mantie Beckley, Elizabeth Schmelzel, Jennette B. Cooper, James F. Belk, Ariette H. Stahl, Benjamin E. Stahl, Lena D. Wilson, Walter L. Wilson, Helen Sullivan, Joseph Sullivan, William H. Martin, Henrietta B. Martin, Elma E. Gardner, George W. Butler, Edgar E. Bush, Sonora A. Joplin, Andrew F. Joplin, Walter Joplin, Frank P. Weasel, George M. York, Earl A. Harrington, Samuel S. Horner, Hortense D. Horner, Samuel M. Blandford, Emma Lou Blandford, Williard C. Austin, Ada V. Austin, Clifton C. Blivan, Susie A. Youngkin, John A. Youngkin, William E. Cavanaugh, William H. Gibbard, Elof Anderson, Emma M. Anderson, Burt T. Parker, Jackson Ownbey, Harrison F. Ownbey, James Ownbey, Mary E. Ownbey, Thomas F. Kelly, John M. Neil, Maud Pitman Neil, Addie Gibbard, Edward H. Starn, Mary

Starn, Aaron Ownbey, Edward J. Dockery, Eva Hunt Dockery, Irving W. Hart, Fannie R. Hart, Charles S. Kingsley Caro F. B. Kingsley, Andrew Campbell, Joseph Penrod, Wilbert R. Reeves, Charles B. Farraday, Willis A. Ross, Josie M. Ross, Lorin T. Kinert, Clara M. Snow, Harry S. Noble, George E. Eagleson, Mary J. Eagleson, Anna Fisher, Alexander T. Ellis, Joseph Ehrmantrant, Margaret M. Ehrmantrant, Charles W. Clawson, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, John K. Woodburn, William B. Davidson, Rice J. Harbaugh, Margaret Scully, John J. Blake, Dennis Thornton, Albert S. Holcomb, Beulah B. Lake, Abbie M. Briggs, Nathan M. Gardner, Clinton M. Gardner and Alfarata L. Gardner, and by each of them, were false, fraudulent and untrue, and were known to the said persons and to the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand to be false, fraudulent and untrue, and the said statements and each of them were made for the purpose of procuring title from the United States to the lands described in the several sworn statements of the persons hereinbefore named, and which lands are hereafter described, pursuant to the unlawful, false, fraudulent and corrupt conspiracy, combination and agreement hereinbefore referred to.

That in truth and in fact, divers of the said several applicants had been supplied and furnished the money with which to pay for said lands and the fees

and expenses incident to obtaining title thereto, by the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, or one or more of them, pursuant to the unlawful, fraudulent and corrupt agreement hereinbefore referred to; and the title to said land was so obtained by each and all of the several persons hereinbefore named as applicants, for the purpose and with the understanding that the same should be conveyed at the request of the said defendants as soon as title thereto should be obtained from the United States.

SIXTH.

And complainant further avers and charges that the said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, by their said unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill of complaint, mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of complainant to be issued to the various persons hereinbefore in this bill of complaint mentioned and hereinafter to be mentioned in connection with the several descriptions of said lands to be mentioned and set out. And your complainant further avers and charges that the said pretended patents to the lands hereinafter to be described, were not procured, as the defendants Barber Lumber Company, a cor-

poration, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, well knew at the time of procuring the same, in compliance with the laws of the United States, And your complainant further avers and charges that in the case of each and every of such tracts of land hereinafter in this bill of complaint described, the acts and conduct of the said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, and each of them, and of each and every of their employees and confederates, were illegal and fraudulent and that the patents procured from this complainant by and on behalf of said defendants, were and are, in each and every instance, fraudulent and void, as against this complainant, and contrary to equity and good conscience, and being so, ought, by this court, to be set aside and held for naught, not only in the hands of said defendants, but in the hands of any other person or persons whomsoever, if not still in the hands of the defendants.

EIGHTH.

And complainant avers and charges that the patents so unlawfully and fraudulently procured from complainant by and on behalf of the said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, for the several tracts of land hereinafter in this bill of complaint

mentioned and described, were issued by this complainant in each and every instance, within six years of the filing of this bill of complaint.

NINTH.

Complainant further avers and charges that pursuant to such unlawful and corrupt combination, conspiracy and agreement and to effect the object and purpose thereof, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand did induce the said several persons hereinbefore and hereinafter named in connection with the description of the said several tracts of land, to convey the same, in some instances to the defendant Albert E. Palmer, otherwise, A. E. Palmer, in some instances to the defendant Horace A. Rand, in some instances to the defendant Barber Lumber Company, in other instances to one George S. Long, in other instances to other person or persons unknown to complainant; but complainant avers that in each and every instance such conveyances were executed for the benefit of said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore set out and referred to.

TENTH.

And complainant here, now sets forth and de-

scribes the lands so as aforesaid, fraudulently procured to be patented by complainant by and on behalf of the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, together with the name in each instance of the person through and by whom patents to said lands were so fraudulently obtained from complainant, as hereinbefore set out.

NELLIE J. THOMPSON: SE. $\frac{1}{4}$ SW. $\frac{1}{2}$, Lot 4, Sec. 30, NE. $\frac{1}{2}$ NW. $\frac{1}{2}$, Lot 1, Sec. 31, T. 7 N., R. 5 E., B. M.

JOHN G. McDONALD: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 5 E., B. M.

DEAN WEST: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 27, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 5 E.

LOUISA B. WEST: NW. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

DANIEL P. WOODMORE: SE. $\frac{1}{4}$, Sec. 35, T. 7 N., R. 5 E., B. M.

CHARLES NELSON: NE. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

WILLIAM PEARSON: NE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 5 E., B. M.

MARGARET PEARSON: N. $\frac{1}{2}$ NW. $\frac{1}{2}$, NW. $\frac{1}{2}$ NE. $\frac{1}{2}$, Sec. 27, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 5 E., B. M.

LELIA LEE: SE. $\frac{1}{4}$, Sec. 1, T. 7 N., R. 5 E., B. M.

ARTHUR E. BROOKHART: SW. $\frac{1}{4}$, Sec. 35,

T. 7 N., R. 5 E., B. M.

GUSTAV A. LINK: SW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 5 E., B. M.

MARY LINK: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 22, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E.

GEORGE M. CUTLER: NW. $\frac{1}{4}$ Sec. 13, T. 7 N., R. 5 E., B. M.

THADDEUS M. GLASS: NE. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 5 E., B. M.

HARRY L. CLYNE: SE. $\frac{1}{4}$, Sec. 6, T. 7 N., R. 5 E., B. M.

LOUIS NIBLER: SE. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

JOHN U. CASSELL: SW. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 5 E., B. M.

OLIVER JOHNSON: SW. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

EDWARD BRISBIN: Lot 3, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 1, T. 7 N., R. 5 E.

WILLIAM W. ABRAMS: Lots 3, 4, Sec. 5, T. 7 N., R. 5 E., S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 32, T. 8 N., R. 5 E., B. M.

SAMUEL C. BOWEN: SW. $\frac{1}{4}$, Sec. 17, T. 7 N., R. 5 E., B. M.

HOMER C. GRANGER: NE. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 5 E., B. M.

LEWIS K. BURNS: NW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 5 E., B. M.

JOHN M. BYRO: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 1, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 5 E., B. M.

WILLIAM F. SNOW: W. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$

SW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 5 E., B. M.

LEWIS L. FOLSOM: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 18, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 5 E., B. M.

JOSEPH M. HOLLISTER: SE. $\frac{1}{4}$, Sec. 7 T. 7 N., R. 5 E., B. M.

LEONORA HOLLISTER: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 18, T. 7 N., R. 5 E., B. M.

CHARLES A. WALKER: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 8, T. 7 N., R. 5 E., B. M.

HENRY F. BENEDIX: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 5, T. 7 N., R. 5 E., B. M.

URIAH F. McBURNEY: SE. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 5 E., B. M.

WILLIAM J. MARCUM: Lot 4, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 4, T. 7 N., R. 5 E., S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 33, T. 8 N., R. 5 E., B. M.

SAMUEL MARCUM: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 7, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 8, T. 6 N., R. 6 E., B. M.

WALTER L. HARRISON: Lot 3, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 30, T. 7 N., R. 5 E., B. M.

JAMES O. BAKER: SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 5 E., B. M.

HENRY HUMPHREY: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 28, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 5 E.

CHARLES W. BALENTINE: NE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 5 E., B. M.

M. LAETA EAGLESON: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 8, T. 7 N., R. 5 E., B. M.

NORMAN H. YOUNG: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 17,

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 18, T. 7 N., R. 5 E., B. M.

FRANK B. NICKERSON: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Lot 1, Sec. 30, T. 7 N., R. 5 E., B. M.

LETTIE L. STEPHENSON: SE. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 5 E., B. M.

MARTIN S. STEPHENSON: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 33, W. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 5 E., B. M.

GERTRUDE A. LEWIN: NE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 5 E., B. M.

WILLIAM H. LEWIN: NE. $\frac{1}{4}$, Sec. 32, T. 6 N., R. 6 E., B. M.

ALTHA GILLUM: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 25, T. 8 N., R. 5 E., B. M.

MACK GILLUM: NE. $\frac{1}{4}$, Sec. 21.

JOHN R. GARY: SE. $\frac{1}{4}$, Sec. 25, T. 8 N., R. 5 E., B. M.

FRANK LANE: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 25, T. 8 N., R. 5 E., B. M.

URIAH FLINT: NE. $\frac{1}{4}$, Sec. 35, T. 8 N., R. 5 E., B. M.

DAVID G. THOMPSON: SE. $\frac{1}{4}$, Sec. 26, T. 8 N., R. 5 E., B. M.

SAMUEL GREIG: Lot 4, Sec. 1, Lots 1, 2, 3, Sec. 2, T. 7 N., R. 5 E., B. M.

SARAH GREIG: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 5 E., B. M.

GUSTAV H. ROTHINE: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 5, T. 7 N., R. 5 E., B. M.

WILLIAM F. ROBERTS: NW. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 5 E., B. M.

PATRICK H. DOWNS: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW.

$\frac{1}{4}$, Sec. 17, T. 7 N., R. 5 E., B. M.

JOHN C. MONROE: NE. $\frac{1}{4}$, Sec. 35, T. 7 N., R. 5 E., B. M.

MARY A. MONROE: SE. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 5 E., B. M.

JAMES H. HAMILTON: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 5 E., B. M.

MICHAEL KOPPAS: SE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 5 E., B. M.

JENNIE E. THOMPSON: SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 4 E.

ALBERT B. EWING: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 6 E.

CORA B. EWING: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 5 E., B. M.

BERTHA MARTIN: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 1, T. 7 N., R. 5 E., B. M.

EDWARD J. PHELPS: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 7 N., R. 5 E., B. M.

JOHN BATES: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 20, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 5 E., B. M.

WILLIAM H. MARTIN: SE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 8 E., B. M.

HENRIETTA B. MARTIN: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 1, 2, Sec. 7 T. 7 N., R. 8 E., B. M.

JENS OLESON: SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 7 E., B. M.

EVELYN O'FARRELL: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 26, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 35, T. 7 N., R. 5 E., B. M.

OLIVER JOHNSON: SW. $\frac{1}{4}$, Sec. 33, T. 7 N., R. 4 E., B. M.

CHARLEY PATTERSON: NW. $\frac{1}{4}$, Sec. 33, T. 6 N., R. 6 E., B. M.

GEORGE S. WARREN: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 32, T. 6 N., R. 6 E., B. M.

GEORGE H. ENSWORTH: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 19, T. 6 N., R. 6 E.

WILLIAM C. LANE: NW. $\frac{1}{4}$, Sec. 28, T. 6 N., R. 6 E., B. M.

ERY A. WILMOT: NW. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 6 E., B. M.

HARRY S. WORTHMAN: W. $\frac{1}{2}$ SW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 6 E., B. M.

EDWARD E. BUTLER: SE. $\frac{1}{4}$, Sec. 32, T. 6 N., R. 6 E., B. M.

WILBERT F. WILMOT: Lots 3, 4, 5, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 6, T. 7 N., R. 6 E., B. M.

JOHN D. FRENCH: SE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 6 E., B. M.

ADELLA C. BROOKHART: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 6 E.

HOMER G. ALLEN: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 18, T. 6 N., R. 6 E., B. M.

WALTER S. WALKER: SE. $\frac{1}{4}$, Sec. 31, T. 6 N., R. 6 E., B. M.

JOSEPH FRENCH: SW. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 6 E., B. M.

LOUIS M. PRITCHARD: NW. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 6 E., B. M.

WILLIAM JUDGE: NE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 6 E., B. M.

SMITH BARKER: SW. $\frac{1}{4}$, Sec. 33, T. 6 N., R. 6 E., B. M.

SEDGWICK HOOVER: SW. $\frac{1}{4}$, Sec. 28, T. 6 N., R. 6 E., B. M.

HENRY RICS: E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 6, 7, Sec. 6, T. 7 N., R. 6 E., B. M.

JOHN W. ROSE: Lots 2, 1, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 1, T. 6 N., R. 7 E., B. M.

FREDERICK THURMAN: NE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 6 E., B. M.

VICTOR L. EOFF: W. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 8, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 6 E., B. M.

HARRY S. WORTHMAN: W. $\frac{1}{2}$ SW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 6 E., B. M.

CHARLES W. VALENTINE: NE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 5 E., B. M.

BURT RESSER: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 3, 4, Sec. 1, T. 6 N., R. 7 E., B. M.

EDWARD A. LOCKHART: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 1, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 12, T. 6 N., R. 7 E., B. M.

FRANK R. McDONALD: Lots 2, 3, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 6, T. 6 N., R. 8 E., B. M.

LUELLA JAYCOX: Lots 4, 5, 6, 7, Sec. 6, T. 6 N., R. 8 E., B. M.

ORLIN R. JAYCOX: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 8 E., B. M.

BENJAMIN R. ALLEN: NE. $\frac{1}{4}$, Sec. 30, T. 6 N.,

R. 8 E., B. M.

SAMUEL E. VANCE: NW. $\frac{1}{4}$, Sec. 29, T. 6 N.,

R. 8 E., B. M.

JOHN E. HOBBS: SW. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 8 E., B. M.

JOHN J. POWLEY: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 32, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 33, T. 6 N., R. 8 E.

LOUISE E. BUTLER: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 4, T. 7 N., R. 8 E., B. M.

ELVIE M. BUTLER: Lot 4, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 8 E.

ALICE FORDNEY: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 3, T. 7 N., R. 8 E., B. M.

HENRY BAYHOUSE: SW. $\frac{1}{4}$, Sec. 3, T. 7 N., R. 8 E., B. M.

ALFRED BAYHOUSE: SE. $\frac{1}{4}$, Sec. 3, T. 7 N., R. 8 E., B. M.

FRANK BAYHOUSE: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 19, T. 7 N., R. 8 E., B. M.

GEORGE BAUHOUSE: NE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 8 E., B. M.

MOSES H. KEMPNER: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 19, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 20, T. 7 N., R. 8 E., B. M.

ANNIE E. KEMPNER: NE. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 8 E., B. M.

MERRITT L. TWOGOOD: NW. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 8 E., B. M.

IDA TWOGOOD: SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 4, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 9, T. 7 N., R. 8 E., B. M.

DELILAH BAYHOUSE: NW. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 8 E., B. M.

ANDREW HANSEN: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 22, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, T. 7 N., R. 8 E., B. M.

EMERSON SENSENIG: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, N. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 26, T. 7 N., R. 8 E., B. M.

LUCRETIA C. SENSENIG: SW. $\frac{1}{4}$, Sec. 33, T. 7 N., R. 8 E., B. M.

JABOC V. NUSBAUM: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 8 E., B. M.

PEARL I. NUSBAUM: SE. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 8 E., B. M.

BENJAMIN C. EAGLESON: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E.

CHARLES H. EAGLESON: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E.

HARRY K. EAGLESON: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E.

HELEN EAGLESON: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 8 E., B. M.

GEORGE T. ELLIS: SE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 8 E., B. M.

MARY THOMPSON & T. N. THOMPSON: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 1, 2, Sec. 19, T. 7 N., R. 8 E., B. M.

GENERAL L. WILLHITE: SW. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 8 E., B. M.

ELIZABETH WILLHITE: NE. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 8 E., B. M.

EMMA BILDERBACK: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 27,

N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 8 E., B. M.

WILLIAM F. NOBLE: NE. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 8 E., B. M.

CAROLINE F. ALEXANDER: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 8 E., B. M.

CHARLES R. BECKLEY: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 26, T. 7 N., R. 8 E., B. M.

MANTIE BECKLEY: SW. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 8 E., B. M.

ELIZABETH SCHMELZEL: SE. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 8 E., B. M.

JENNETTE B. COOPER: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 30, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 29, T. 7 N., R. 8 E., B. M.

JAMES F. BELK: SW. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 8 E., B. M.

ARIETTA H. STAHL: E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 3, 4, Sec. 7, T. 7 N., R. 8 E.

BENJAMIN E. STAHL: SW. $\frac{1}{4}$, Sec. 8, T. 7 N., R. 8 E., B. M.

LENA D. WILSON: SE. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 8 E., B. M.

WALTER L. WILSON: Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 8 E.

HELEN SULLIVAN: NW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 8 E., B. M.

JOSEPH SULLIVAN: NE. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 8 E., B. M.

WILLIAM H. MARTIN: SE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 8 E., B. M.

HENRIETTA B. MARTIN: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots

1, 2, Sec. 7, T. 7 N., R. 8 E.

ELMA E. GARDNER: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 8 E., B. M.

GEORGE W. BUTLER: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 7 N., R. 8 E., B. M.

EDGAR E. BUSH: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 8 E., B. M.

SONORA A. JOPLIN: SW. $\frac{1}{4}$, Sec. 33, T. 7 N., R. 8 E., B. M.

ANDREW F. JOPLIN: Lots 1, 2, 3, 4, Sec. 5, T. 6 N., R. 8 E., B. M.

WALTER JOPLIN: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 20, T. 7 N., R. 8 E., B. M.

FRANK P. WEASEL: SE. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 8 E., B. M.

GEORGE M. YORK: Lots 1, 2, 3, 4, Sec. 30, T. 7 N., R. 8 E., B. M.

EARL A. HARRINGTON: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 8 E., B. M.

SAMUEL S. HORNER: W. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$; NW. $\frac{1}{4}$, Sec. 26, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 7 E., B. M.

HORTENSE D. HORNER: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 7 E., B. M.

SAMUEL M. BLANDFORD: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 7 E., B. M.

EMMA LOU BLANDFORD: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec.

14, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 7 E., B. M.

WILLARD C. AUSTIN: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 22, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 7 E., B. M.

ADA V. AUSTIN: N. $\frac{1}{2}$ SW. $\frac{1}{4}$ N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, T. 7 N., R. 7 E., B. M.

CLIFTON C. BLIVEN: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 7 E., B. M.

SUSIE A. YOUNGKIN: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 7 E.

JOHN A. YOUNGKIN: NE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 7 E., B. M.

WILLIAM E. CAVANAUGH: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 15, T. 7 N., R. 8 E.

WILLIAM H. GIBBARD: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 7 E., B. M.

ELOF ANDERSON: SE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 7 E., B. M.

EMMA M. ANDERSON: Lots 1, 2, 3, 4, Sec. 1, T. 7 N., R. 7 E.

BURT T. PARKER: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 9, T. 7 N., R. 7 E., B. M.

JACKSON OWNBEY: NW. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 7 E., B. M.

HARRISON F. OWNBEY: SW. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 7 E., B. M.

MARY E. OWNBEY: Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 7 E., B. M.

MARY E. OWNBEY: Lots 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 7 E., B. M.

THOMAS F. KELLY: SW. $\frac{1}{4}$, Sec. 10, T. 7 N., R. 8 E., B. M.

JOHN M. NEIL: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$, NW. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E., B. M.

MAUD PITMAN NEIL: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 4, T. 7. N., R. 8 E.

ADDIE G. GIBBARD: Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 7 E.

EDWARD H. STARN: NW. $\frac{1}{4}$, Sec. 10, T. 7 N., R. 8 E., B. M.

MARY STARN: SE. $\frac{1}{4}$, Sec. 10, T. 7 N., R. 8 E., B. M.

AARON OWNBEY: E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 9, T. 7 N., R. 8 E., B. M.

EDWARD J. DOCKERY: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 8 E., B. M.

EVA HUNT DOCKERY: Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 4, T. 7 N., R. 8 E.

IRVING W. HART: NW. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 8 E., B. M.

FANNIE R. HART: SW. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 8 E., B. M.

CHARLES S. KINGSLEY: SW. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 8 E., B. M.

CARO F. B. KINGSLEY: NW. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 8 E., B. M.

ANDREW CAMPBELL: NW. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

JOSEPH PENROD: NE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

WILBERT R. REEVES: NW. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

CHARLES B. FARRADAY: NW. $\frac{1}{4}$, Sec. 28, T.

6 N., R. 4 E., B. M.

WILLIS A. ROSS: SE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

JOSIE M. ROSS: SW. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

LORIN T. KINERT: SW. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

CLARA M. SNOW: SE. $\frac{1}{4}$, Sec. 15, T. 6 N., R. 4 E., B. M.

HARRY S. NOBLE: SW. $\frac{1}{4}$, Sec. 28, T. 6 N., R. 4 E., B. M.

GEORGE E. EAGLESON: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 27, T. 6 N., R. 4 E., B. M.

MARY J. EAGLESON: Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 1, T. 6 N., R. 4 E.

ANNA FISHER: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 12, T. 6 N., R. 4 E.

ALEXANDER T. ELLIS: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 22, T. 6 N., R. 4 E.

JOSEPH EHRLMANNTRANT: NW. $\frac{1}{4}$, Sec. 15, T. 6 N., R. 4 E., B. M.

MARGARET M. EHRLMANNTRANT: SE. $\frac{1}{4}$, Sec. 15, T. 6 N., R. 4 E., B. M.

CHARLES W. CLAWSON: SW. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

GEORGE R. AVERY: SE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

FRANK R. MARTIN: NE. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

WHEELER H. MARTIN: SE. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

THOMAS L. MARTIN: SW. $\frac{1}{4}$, Sec. 23, T. 6 N., R. 4 E., B. M.

JOHN K. WOODBURN: SW. $\frac{1}{4}$, Sec. 15, T. 6 N., R. 4 E., B. M.

WILLIAM B. DAVIDSON: NE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

RICE J. HARBAUGH: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 22, T. 6 N., R. 4 E., B. M.

MARGARET SCULLY: NW. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

JOHN J. BLAKE: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 5 N., R. 4 E., B. M.

DENNIS THORNTON: SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, W. $\frac{1}{2}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 13, T. 5 N., R. 3 E., B. M.

ALBERT S. HOLCOMB: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 21, T. 5 N., R. 4 E., and the SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Lots 3, 4, 5, 6, Sec. 22, T. 5 N., R. 4 E., B. M.

BEULAH B. LAKE: NE. $\frac{1}{4}$, Sec. 8, T. 6 N., R. 4 E., B. M.

ABBIE M. BRIGGS: SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 5, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 5, T. 6 N., R. 4 E., B. M.

NATHAN M. GARDNER: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 33, T. 5 N., R. 4 E., B. M.

CLINTON M. GARDNER: SE. $\frac{1}{4}$, Sec. 6, T. 4 N., R. 4 E., B. M.

ALFARATA L. GARDNER: SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Lots 4, 5, Sec. 6, T. 4 N., R. 4 E., B. M.

Forasmuch therefore as the complainant has been

so as above cheated and defrauded of its valuable lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and relievable; and to the end that the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, may full, true direct and certain answers make according to the best of their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, and the several persons hereinbefore named in connection with the description of said lands, may be held, adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the several persons hereinbefore named, and that by reason of such fraud, the patents issued to them, or either of them, or to others in their benefit, be declared void, and as such, be held for naught and set aside, and the said lands restored to the public domain of the complainant; and the said defendants, and each of them, be held to pay into the treasury of complainant, all such reasonable sums of money as it may have found necessary to pay out

and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, and that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this Honorable Court.

May it please your Honors to grant unto this complainant, a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, commanding them, and each of them, by a certain day, and under a certain penalty therein to be insertel, to be and appear before this Honorable Court, and then and there to answer the premises and further, to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience. and your complainant will ever pray.

CHARLES J. BONAPARTE,

Attorney General of the United States.

N. M. RUICK,

United States Attorney, District of Idaho.

MILES S. JOHNSON,

Assistant United States Attorney, District of Idaho,
Solicitors for Complainant.

[Endorsed]: Filed April 17, 1907. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the
Central Division of the District of Idaho.*

IN EQUITY—No. 47.

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINKAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER and
HORACE S. RAND,

Defendants.

Subpoena ad Respondendum.

The President of the United States of America, To
Barber Lumber Company, a corporation, James
T. Barber, Sumner G. Moon, William Sweet,
John Kinkaid, Louis M. Pritchard, Patrick H.
Downs, Albert E. Palmer and Horace S. Rand,
Greeting:

You and each of you are hereby commanded that
you be and appear in said Circuit Court of the United
States, at the courtroom thereof, in Boise, in said
District, on the first Monday of February next, which
will be the Third day of February, A. D. 1908, to
answer the exigency of a Bill of Complaint exhibited
and filed against you in our said court, wherein The
United States of America, is complainant and you
are defendants and further to do and receive what
our said Circuit Court shall consider in this behalf

and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you the marshal of said district, or your deputy, to make due service of this our writ of subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the Seal of our said Circuit Court affixed at Boise, in said District, this 4th day of December, in the year of our Lord One Thousand Nine Hundred and Seven and of the Independence of the United States the One Hundred and 32nd.

[Seal]

A. L. RICHARDSON,
Clerk.

Memorandum Pursuant to Equity Rule No. 12 of the Supreme Court of the United States.

The Defendant is to enter his appearance in the above-entitled suit in the office of the Clerk of said Court on or before the day at which the above Writ is returnable; otherwise the Complainant's Bill therein may be taken pro confesso.

I hereby certify that I received the within Subpoena Ad Respondendum together with a certified copy of the complaint, at Boise, Idaho, on December 4th, 1907, and that I served the same upon the Barber Lumber Company, a corporation, by handing to and leaving with John M. Haines, Statutory Agent and Legal Representative of the said Barber Lumber Company, a corporation, personally, a duplicate of the within subpoena ad respondendum, together

with a certified copy of the complaint, at Boise, Idaho, on December 4th, 1907; served William Sweet by handing to and leaving with him personally, a duplicate of the within subpoena ad respondendum together with a certified copy of the complaint at Boise, Idaho, on December 4th, 1907; and served Patrick H. Downs by handing to and leaving with him personally, a duplicate of the within subpoena ad respondendum, together with a certified copy of the complaint, at Boise, Idaho, on December 5th, 1907.

After due and diligent search, I am unable to find James T. Barber, Sumner G. Moon, John Kinkaid, Louis M. Pritchard, Albert E. Palmer, and Horace S. Rand within the District of Idaho.

Boise, Idaho, December 5th, 1907.

R. ROUNDS,

U. S. Marshal,

By W. R. Bryon,

Deputy.

[Endorsed]: No. 47. In the Circuit Court of the United States for the Central Division of the District of Idaho. In Equity. United States of America vs. Barber Lumber Co. et al. Subpoena ad Respondendum. Returned and Filed Dec. 6, 1907. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth
Circuit, District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINKAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER and
HORACE S. RAND,

Defendants.

Answer of Barber Lumber Company.

Now comes the above-named defendant, Barber Lumber Company, and, reserving to itself all right of exception to the bill of complaint herein and all benefit and advantage of any exception which can or may be had or taken thereto, for answer to the bill of complaint herein respectfully shows to the Court and admits, that the defendant Barber Lumber Company is a corporation organized and existing under the laws of the State of Wisconsin; admits that defendants James T. Barber and Sumner G. Moon are citizens and residents of the State of Wisconsin; admits that defendant William Sweet is a citizen and resident of the State of Oregon; admits that the defendant John Kinkaid is a resident and citizen of the State of Nevada; admits that defendant Louis M. Pritchard is a citizen and resident of the State of California; admits that defendant Patrick H. Downs

is a citizen and resident of the State of Idaho; admits that the defendant Albert E. Palmer was formerly a resident of the State of Washington, and admits that his present residence is unknown and admits that the defendant Horace S. Rand is a citizen and resident of the State of Iowa.

Further answering said bill of complaint defendant Barber Lumber Company admits that complainant was the owner of the lands described in its bill of complaint, at the times therein specified, and admits that by Act of Congress entitled, "An act for the Sale of Timber Lands in the States of California, Oregon, Nevada and in Washington Territory," as amended and extended by act of Congress of August 4, 1892, it was provided, among other things, as in said bill of complaint alleged by the first paragraph thereof, and admits that said acts of Congress contained the provisions set forth in the first paragraph of said bill of complaint.

Further answering said bill of complaint the defendant, Barber Lumber Company, admits that the Commissioner of the General Land Office promulgated certain regulations, among which was a requirement that any person desiring to purchase lands under said act should make oath to certain questions, and admits that the questions set forth and specified in the second paragraph of said bill of complaint are among those prescribed by the rules and regulations so promulgated by the Commissioner of the General Land Office; but said defendant alleges that said rules and regulations were so prescribed and promulgated by the Com-

missioner of the General Land Office without authority so to do, and alleges that said rules and regulations were not designed to give effect to the provisions of said acts of Congress, but same were made and promulgated in violation thereof, and that each and every of said questions so required by said rules and regulations to be answered by each applicant for the purchase of land under said acts of Congress were wholly immaterial and unauthorized by said acts. That among the questions so required to be answered by the applicants for the purchase of timber, under said acts of Congress, by such rules and regulations so promulgated by the Commissioner of the General Land Office, without authority, and which were so required to be answered in violation of said acts of Congress, are the questions specified in paragraph two of the bill of complaint herein, to wit:

“Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself”?

And:

“Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person”?

And:

“Has any other person than yourself, or has any

firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon”?

Also the following:

“Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money”?

And:

“Where did you get the money with which to pay for this land and how long have you had the same in your actual possession”?

And said defendant Barber Lumber Company, specifically denies that the rules and regulations requiring the answer of said questions were prescribed and promulgated to give effect to the provisions of said acts of Congress, and alleged that the same were so promulgated in direct violation thereof.

Said defendant, Barber Lumber Company, further answering the bill of complaint herein, specifically denies that it, either alone or together with the defendants James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, or any or either of them, did combine, conspire, confederate and agree together or with the persons named in said bill, to wit: Nellie J. Thompson, John G. McDonald, Dean West, Louise B. West, Daniel P. Woodmore, Charles Nelson, William Pearson, Margaret Pearson, Lelie Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, George M. Cutler, Thaddeus M. Glass, Harry L. Clyne, Louis

Nibbler, John U. Cassell, Oliver Johnson, Edward Brisbin, William W. Abrams, Samuel C. Bowen, Homes C. Granger, Lewis K. Burns, John M. Byro, William F. Snow, Lewis L. Folsom, Joseph M. Hollister, Leonora Hollister, Charles A. Walker, Henry F. Benedix, Uriah F. McBurney, William J. Marcum, Samuel Marcum, Walter L. Harrison, James O. Baker, Henry Humphrey, Charles W. Balentine, M. Laeta Eagleson, Norman H. Young, Frank B. Nickerson, Lettie L. Stephenson, Martin S. Stephenson, Gertrude A. Lewis, William M. Lewin, Altha Gillum, Mack Gillum, John R. Gary, Frank Lane, Uriah Flint, David G. Thompson, Samuel Greig, Sarah Greig, Gustav H. Rothine, William F. Roberts, Patrick H. Downs, John C. Monroe, Mary A. Monroe, James H. Hamilton, Michael Koppas, Jennie E. Thompson, Albert B. Ewing, Cora B. Ewing, Bertha Martin, Edward J. Phelps, John Bates, William H. Martin, Henrietta B. Martin, Jens Olson, Evelyn O'Farrell, Oliver Johnson, Charley Patterson, George S. Warren, George H. Ensworth, William C. Lane, Ery A. Wilmot, Harry S. Worthman, Edward E. Butler, Wilbert F. Wilmot, John D. French, Adella C. Brookhart, Homer G. Allen, Walter S. Walker, Joseph Franch, Louis M. Pritchard, William Judge, Smith Barker, Sedwig Hoover, Henry Ries, John W. Rose, Frederick Thurman, Victor L. Eoff, Harry S. Worthman, Charles W. Ballentine, Burt Resser, Edward A. Lockhart, Frank R. McDonald, Luella Jaycox, Orlin R. Jaycox, Benjamin R. Allen, Samuel E. Vance, John J. Hobbs, John J. Powley, Louise E. Butler, Elvie M.

Butler, Alice Fordney, Henry Bayhouse, Alfred Bayhouse, Frank Bayhouse, George Bayhouse, Moses H. Kempner, Annie E. Kampner, Merritt L. Twogood, Ida Twogood, Delilah Bayhouse, Andrew Hansen, Emerson Sensenig, Lucretia C. Sensenig, Jacob V. Nusbaum, Pearl I. Nusbaum, Benjamin C. Eagleson, Charles H. Eagleson, Harry K. Eagleson, Helen E. Eagleson, George T. Ellis, Mary Thompson and T. S. Thompson, General L. Lilhite, Elizabeth Willhite, Emma Bilderback, William F. Noble, Caroline F. Alexander, Charles R. Beckley, Mantie Beckley, Elizabeth Schmelzel, Jeanette B. Cooper, James F. Belk, Arietta H. Stahl, Benjamin E. Stahl, Lena D. Wilson, Walter L. Wilson, Helen Sullivan, Joseph Sullivan, William H. Martin, Henrietta B. Martin, Elma E. Gardner, George W. Butler, Edgar E. Bush, Sonora A. Joplin, Andrew F. Joplin, Walter Joplin, Frank P. Weasel, George M. York, Earl A. Harrington, Samuel S. Horner, Hortense D. Horner, Samuel M. Blandford, Emma Lou Blandford, Willard C. Austin, Ada V. Austin, Clifton C. Bliven, Susie A. Youngkin, John A. Youngkin, William E. Cavanaugh, William H. Gibbard, Elof Anderson, Emma M. Anderson, Burt T. Parker, Jackson Ownbey, Harrison F. Ownbey, James Ownbey, Mary E. Ownbey, Thomas F. Kelly, John M. Neil, Maud Pitman Neil, Addie G. Gibbard, Edward H. Starn, Mary Starn, Aaron Ownbey, Edward J. Dockery, Eva Hunt Dockery, Irving W. Hart, Fanny R. Hart, Charles S. Kingsley, Caro F. B. Kingsley, Andrew Campbell, Josepr Penrod, Wilbert R. Reeves, Charles B. Farraday, Willis A. Ross,

Josie M. Ross, Lorin T. Kinert, Clara M. Snow, Harry N. Noble, George E. Eagleson, Mary J. Eagleson, Anna Fisher, Alexander T. Ellie, Joseph Ehrmanntrant, Margaret M. Ehrmanntrant, Charles E. Clawson, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, John K. Woodburn, William B. Davidson, Rice J. Harbaugh, Margaret Scully, John J. Blake, Dennis Thornton, Albert S. Holcomb, Beulah B. Lake, Abbie M. Briggs, Nathan M. Gardner, Clinton M. Gardner, and Alfarata L. Gardner, or any or either of them, or with any other person whatsoever, to defraud the complainant out of any of its lands, or of its titles thereto or its use thereof, and denies that it alone or together with any or all of said defendants or said other persons, or any or either of them, or with any other person whatsoever, did devise a plan and method to unlawfully and fraudulently, by means of fraud, perjury, subordination of perjury or any other unlawful means, procure for itself and for its use, benefit and pecuniary advantage, or for the use and benefit of any person or persons, any of the public lands of complainant.

Further answering said bill of complaint the defendant, Barber Lumber Company, denies that it, either alone or in connection with the defendants or with the other persons hereinbefore mentioned or any or either of them, or any other person, procured persons to avail themselves of the provisions of said act of Congress, and denies that any agreement at any time existed between this answering defendant with any or all of said persons hereinbefore men-

tioned, or any other person whatsoever, whereby this answering defendant, either alone or in connection with any other person, agreed to purchase the lands described in the respective statements and applications of the said persons hereinbefore mentioned, who made applications under said act of Congress, for the purchase of public lands, as soon as said applicants should secure title thereto, or at any other time; and this answering defendant denies that it, either alone or in connection with any other person, procured any person or persons to avail themselves of the provisions of said act of Congress, by filing the written statement and doing the other things required by said act and the regulations of the commissioner of the General Land Office applicable to said proceedings, under any agreement of any kind or character, and specifically denies that any agreement was made and entered into between this defendant, either alone or in connection with the other defendants herein, whereby this defendant, either alone or in connection with said defendants herein, agreed to furnish or procured to be furnished and supplied to any of the applicants named in said bill for the purchase of land under said act of Congress, the amount of money necessary to pay, in whole or in part, the expenses in connection with making their filing and procuring title to lands under said act, or to furnish. in whole or in part, the sum necessary to pay for said lands. And specifically denies that any agreement, express or implied, was made, entered into or existed between this answering defendant, either alone or in connection with said other defendants, with any

applicant, for the purchase of land under said Timber and Stone Act, whose names are specifically set forth in the bill of complaint, or any other applicant for the purchase of land under said act, wherein and where by said applicant or applicants were to deed the land so by them purchased, as soon as they should obtain title thereto, to this defendant, either alone or with other defendants, or any or either of them, or to any other person whatsoever, or to any person designated by them, or either of them, or by this defendant.

Further answering said bill of complaint, and particularly the allegations contained in the fourth paragraph thereof, this defendant denies that it, either alone or in connection with the other defendants herein, or any or either of them, induced or procured said Nellie J. Thompson and other persons alleged in said bill of complaint to have been applicants for the purchase of lands under the provisions of said acts, or any or either of them, to apply at the United States Land Office at Boise, Idaho, under the provisions of the acts of Congress aforesaid, for the purchase of any of the lands of complainant, and denies that it, either alone or in connection with the other defendants herein, or any or either of them, induced and procured any or either of said persons above mentioned, being the identical parties who in said bill of complaint are alleged to have made application for the purchase of lands, to appear before the register or receiver of the United States Land Office at Boise, Idaho, and to each make and subscribe and make oath to the written statements required by said

act of persons desiring to avail themselves of the provisions thereof, and denies that it alone or in connection with the other defendants herein, or any or either of them, did cause, induce and procure said applicants, or any or either of them, to make any statements before the register or receiver of said land office, of any kind or character, or to make any application for the purchase of any land belonging to the United States, pursuant to said acts of Congress or any other acts.

Further answering said bill of complaint, this answering defendant denies that it, alone or in connection with the other defendants herein, or any or either of them, induced or procured the said applicants for the purchase of lands, hereinbefore named, to appear before the land office of the United States at Boise, Idaho, and to answer the certain questions hereinbefore in this answer set out being the questions prescribed by the Commissioner of the General Land Office, and alleged that if said applicants did make answer to said questions before said land office, the same were made without the knowledge or procurement of this defendant, and that defendant now has no knowledge or information sufficient to form a belief as to whether or not said applicants or any of them, did in fact make answers to such questions as alleged in such bill of complaint, and therefore puts complainant to its proof relative to such allegations.

Further answering said bill of complaint and particularly the allegations contained in the fifth paragraph thereof, this defendant alleges that it has no knowledge or information sufficient to form a belief

as to whether or not the statements alleged to have been made by said applicants for the purchase of lands, hereinbefore mentioned or any or either of them, were, if made, true or false, and therefore leaves the complainant to make such proof as it shall be advised to sustain the allegation in said bill of complaint contained, that each of said statements were false, fraudulent and untrue; and this defendant specifically denies the allegation in said bill contained, that it knew or had any reason to believe that said statements of said applicants, or any of them, were falsely made, and is informed and believes that none of said defendants herein knew that such statements were so made; and specifically denies that this defendant, alone or in connection with any of the defendants herein, supplied or furnished any money to any person whatsoever to pay for the lands described in said bill of complaint, or any of them, or to pay the fees and expenditures incident to obtaining such title, or pursuant to any unlawful, fraudulent or corrupt agreement, or pursuant to any agreement whatsoever, either with the person named in said bill of complaint, or with any other person; and denies that title to the lands mentioned and described in said complaint was obtained by each and all of the several persons therein named as applicants, for the purpose and with the understanding that the same should be conveyed at the request of this defendant, either alone or in connection with the other defendants, when title thereto shall be obtained from the United States.

Further answering said bill of complaint, and par-

ticularly the allegations contained in the sixth paragraph thereof, this defendant denies that it, either alone or in connection with the other defendants herein fraudulently obtained and procured patents of the United States to be issued to the persons mentioned in said bill of complaint, as applicants for the purchase of lands under said act, and denies that said patents were not obtained in compliance with the laws of the United States, as in said bill of complaint alleged. And said defendant specifically denies that it, alone or in connection with the other defendants herein, or with any other person, did any act or procured any act to be done in violation of the laws of the United States, and denies that the patents issued to the persons named in said bill of complaint for the lands therein mentioned were illegal, fraudulent and void, or were procured by means of the fraudulent means alleged in said bill.

Further answering said bill of complaint, particularly with reference to the allegations contained in the eighth paragraph thereof, this defendant admits that the patents therein referred to were issued by the United States within six years of the filing of said bill of complaint, but denies that said patents were issued or procured to be issued by or on behalf of this defendant.

Further answering said bill of complaint, and particularly the allegations contained in the ninth paragraph thereof, this defendant admits that certain of the lands mentioned and described in the bill of complaint herein were conveyed by various of the person therein named as applicants for the purchase

of land under said act, to Albert E. Palmer, A. E. Palmer, Horace S. Rand, Barber Lumber Company and George S. Long, but denies that said land was so conveyed pursuant to any conspiracy or agreement, and denies that the same was so conveyed pursuant to any unlawful agreement, made or entered into by this defendant alone or with the other defendants herein, or any of them, or with any other person, or for the purpose of effecting the object or purpose of such agreement.

Further answering said bill of complaint, and particularly the allegations of the tenth paragraph thereof, this defendant denies that any of the lands mentioned and described in said complaint were fraudulently procured to be patented by complainant, by or on behalf of this defendant, or by or on behalf of any of the defendants herein, and denies specifically that the list of lands and patents contained in the tenth paragraph of said bill of complaint, correctly describes the lands patented by the complainant to the persons therein named, and alleges that some of the lands therein described were never in fact patented to the persons therein named.

Further answering said bill of complaint this defendant denies that it at any time, entered into or was a party to any agreement, combination, confederation or conspiracy, with the other defendants herein, or with any or all of the persons named in the bill of complaint herein, having for its object to defraud the complainant of any of its public lands, and denies that it at any time did any act or procured any act to be done, or knew of any act being done by any of

the parties named in said bill of complaint, pursuant to any agreement, confederation or conspiracy to defraud the United States in any manner whatsoever.

Further answering said complainant and as a separate defense thereto, this defendant respectfully alleged that it is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and that it was organized pursuant to the laws of that State on the — day of July, 1902, that after its incorporation it purchased of divers and sundry persons certain lands situated in the State of Idaho, which had theretofore been purchased from the Government pursuant to said acts, by various persons named in said bill, a true and correct schedule of which lands so purchased by this defendant showing the description of the several tracts and the names of the various persons who purchased the same from complainant pursuant to said acts of Congress, is hereto attached and marked Exhibit "A," and made a part hereof. That complainant has heretofore and prior to the filing of the bill herein, issued its patent for each and every of said tracts so purchased by this defendant. That at the time of purchasing said land this defendant paid therefor a valuable consideration, which payment and purchase was made by this defendant, without knowledge or notice of any defect in the title, or without any knowledge or notice that the laws of the United States in the matter of the entry of said lands had not been in all things complied with, and without knowledge or notice of any claim on the part of complainant to that effect. That prior to such purchase

and payment, the complainant had, in each instance, issued to the person from whom this defendant purchased said land, its duly authenticated certificates, and receipt to the effect that said lands had been bought and paid for by the person entering same; that the laws of the United States had in all things been complied with in the the matter of the original entry and final proof, and that the holder of such certificate was entitled to receive a patent from complainant for the lands therein mentioned. That relying upon such final receipt and certificate, and without knowledge or notice of any fraudulent acts on the part of the persons to whom said certificates were issued and without notice of any claim on the part of the complainant that said act of Congress had not been fully and in all things complied with, this defendant purchased said lands and paid a valuable consideration therefor. That thereafter complainant duly issued patents for each tract of land so purchased by this defendant, and this defendant, relying upon the validity of the title so acquired and the certificate and patent issued by complainant, expended large sums in the erection and construction of sawmills, planing-mills and plant for the manufacture of the timber located on said lands into lumber. That each of the various persons from whom defendant purchased said lands is insolvent. That complainant herein for more than two years after the issuance of said patents, took no action to set the same aside, nor called the same in question in any manner, notwithstanding the officers of said complainant as this defendant is informed and believed

during the whole of said time and prior to the issuance of said patents were well aware of all the facts relative to the entry of said lands and concerning the title thereto. That should the prayer of complainant herein be granted and the patents heretofore issued for said lands so purchased by this defendant, be set aside, this defendant will suffer and sustain an irreparable loss; and this defendant is entitled to protection under said final certificates, patents and records, and upon the facts aforesaid as an innocent purchaser for value.

Further answering said bill of complaint this defendant denies that it has, or at any time had, any interest in any of the lands described in said bill of complaint, except as to such of said lands as are enumerated and described in Exhibit "A," hereto attached, and denies that any of said lands in said bill described were at any time deeded to it, or to any persons for its use or in its behalf, except as to such of said lands as are mentioned and described in said schedule "A."

And this defendant denies all, and all manner of unlawful consideration and conspiracy with which it is charged by said bill, and alleged that any other matter, cause or thing in said complainant's bill of complaint alleged material or necessary for this defendant to make answer unto, and which is not herein and hereby well and sufficiently answered, is not true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence

dismissed with its reasonable costs and charges,
herein most wrongfully sustained.

BARBER LUMBER CO.,

By JAMES T. BARBER, Pt.,

Defendant.

C. T. BUNDY and

R. P. WILCOX,

Solicitors for Defendant Barber Lbr. Co., Eau
Claire, Wis.

A. E. McCARTNEY,

St. Paul, Minn.

J. H. HAWLEY,

A. A. FRASER,

Boise, Idaho,

Of Counsel.

State of Wisconsin,

Eau Claire County,—ss.

James T. Barber, being first duly sworn on oath
says, that he is one of the principal officers, to wit,
president of the Barber Lumber Company, and is au-
thorized to and makes this verification in its behalf.
That he has read the above and foregoing answer
and knows the contents thereof, and that the same
is true to his own knowledge except as to those mat-
ters therein alleged upon information and belief, and
as to those matters he verily believes it to be true.

JAMES T. BARBER.

Subscribed and sworn to before me this 27th day
of January, 1908.

[Seal]

HANNAH F. JOHNSON,

Notary Public, Wisconsin.

My commission expires January 8, 1911.

Exhibit "A" [to Answer of Barber Lumber Company].

By Whom Entered.

Description :

Abrams, Wm. W.,	Lts. 3 & 4, Sec. 5-7-5; S 1/2 SW Sec. 32-8-5
Allen, Homer G.,	E 1/2 NE E 1/2 SE Sec. 18-6-6
Avery, Geo. R.,	SE 1/4 29-6-4
Austin, W. C.,	N. 1/2 SW, SW. SW. 22-7-7; NE SE 21-7-7
Austin, Ada.,	N 1/2 SW, N 1/2 SE 15-7-7
Alexander, Caro.,	E 1/2 NE, N 1/2 SE 34-7-8
Anderson, Elof.,	SE 1/4 12-7-7
Anderson, Emma.,	Lts. 1-2-3-4; 1-7-7
Allen, B. R.,	NE 1/4 30-6-8
Brisbin, Edw.,	Lots 3 SE NW; N 1/2 SW 1-7-5
Ballentine, C. W.,	NE 1/4 7-7-5
Baker, J. O.,	SE 1/4 25-7-5
Benedix, H. F.,	S 1/2 NW, N 1/2 SW 5-7-5
Barker, Smith.,	SW 1/4 33-6-6
Brookhart, Adella C.,	S 1/2 SW, S 1/2 SE 17-6-6
Byro, J. H.,	SE SW 1-7-5, E 1/2 NW. SW NW 12-7-5
Burns, L. K.,	NW 1/4 24-7-5
Bowen, S. C.,	SW 1/4 17-7-5
Brookhart, A. E.,	SW 1/4 35-7-5
Butler, E. E.,	SE 1/4 32-6-6
Bayhouse, Frank.,	N 1/2 SE, N 1/2 SW 19-7-8
Beckley, C. R.,	N 1/2 NW, SW NW & NW SW 26-7-8
Beckley, Mantie.,	SW 1/4 22-7-8
Bush, E. E.,	S 1/2 NW, NE NW NW SW 21-7-8
Bayhouse, Geo.,	NE 1/4 28-7-8
Belk, J. F.,	SW 1/4 12-7-8
Butler, Louisa E.,	N 1/2 SW, N 1/2 SE, 4-7-8
Bliven, C. C.,	E 1/2 NE, N 1/2 SE, 24-7-7

By Whom Entered.

Description :

Butler, Elvie M.,	Lot 4 SW NW W 1/2 SW 2-7-8
Bilderback, Emma.,	N 1/2 SW 27-7-8 N 1/2 SE 28-7-8
Bayhouse, Alfred.,	SE 1/4 3-7-8
Bayhouse, Henry.,	SW 3-7-8
Butler, G. W.,	E 1/2 SE SW SE SE NE 17-7-8
Bayhouse, Delilah.,	NW 1/4 27-7-8
Blandford, S. M.,	SE SE 11-7-7; E 1/2 NE, NE SE, 14-7-7
Blandford, Emma Lou.,	S 1/2 SE 14-7-7; N 1/2 NE 23-7-7
Briggs, Abbie M.,	SW NE, N 1/2 SE, SW SE 5-6-4
Blake, J. J.,	NE NW, NW NE, SW NE, SE NE, 17-5-4
Bates, John.,	NE NW, N 1/2 NE 20, NW NW 21-7-5
Cassell, Jno. M.,	SW 1/4 25-8-5
Clyne, H. L.,	SE 1/4 6-7-5
Cutler, G. M.,	NW 1/4 13-7-5
Campbell, A.,	NW 1/4 21-6-4
Clawson, C. W.,	SW 1/4 29-6-4
Cooper, Jeanette B.,	SE SW, S 1/2 SE 30, SW SW 29-7-8
Cavanaugh, W. E.,	N 1/2 NW, N 1/2 NE 15-7-8
Davidson, W. B.,	NE 1/4 20-6-4
Dockery, Eva H.,	Lts. 3 & 4, S 1/2 NW 4-7-8
Dockery, E. J.,	E 1/2 SE, SW SE, SE SW, 24-7-8
Downs, P. H.,	N 1/2 NE, N 1/2 NW, 17-7-5
Ewing, Clara B.,	E 1/2 NW, W 1/2 NE, 34-7-5
Ewing, A. B.,	Lts. 3 & 4 E 1/2 SW 7-7-6
Ensworth, Geo. H.,	E 1/2 SE, E 1/2 NE, 19-6-6
Ehrmanntrant, Jos.,	NW 1/4 15-6-4
Ehrmanntrant, Margaret M.,	SE 1/4 15-6-4
Ellis, A. T.,	N 1/2 NW, W 1/2 NE 22-6-4
Ellis, G. T.,	SE 1/4 12-7-8
Eagleson, B. C.,	N 1/2 SW, N 1/2 SE, 25-7-8
Eagleson, Harry K.,	S 1/2 NE, S 1/2 NW, 25-7-8

By Whom Entered.	Description :
Eagleson, Helen E.,	S 1/2 NW, 23-7-8; S 1/2 NE 22-7-8
Eagleson, C. H.,	S 1/2 SW, S 1/2 SE, 25-7-8
Eagleson, Geo. E.,	E 1/2 NE, E 1/2 SE, 27-6-4
Eagleson, Mary J.,	Lot 2 SW NE W 1/2 SE 1-6-4
Eagleson, M. Laeta.,	S 1/2 NE, NW SE 8-7-5
Eoff, Victoria L.,	W 1/2 SE, SE SE 8-6-6
Flint, Uriah.,	NE 1/4 35-8-5
French, Joseph.,	SW 1/4 21-6-6
French, John D.,	SE 1/4 20-6-6
Folsom, L. L.,	NE NW 18; SE NW, E 1/2 SW, 7-7-5
Fisher, Anna.,	E 1/2 SE, NW SE, SW NE 12-6-4
Farady, C. B.,	NW 1/4 28-6-4
Fordney, Alice.,	Lot 1 & 2; S 1/2 NE, 3-7-8
Gillum, Altha.,	S 1/2 NW, S 1/2 NE, 25-8-5
Gillum, Mack.,	NE 1/4, 26-8-5
Granger, H. C.,	NE 1/4, 14-7-5
Garry, J. R.,	SE 1/4 25-8-5
Glass, T. M.,	NE 1/4 13-7-5
Greig, Samuel.,	Lot 4 Sec. 1; Lot 1-2-3 Sec. 2-7-5
Greig, Sarah.,	S 1/2 NW, S 1/2 NE, 2-7-5
Gardner, Elma E.,	S 1/2 SW, NW SW 12; NE SE 11-7-7
Gibberd, W. H.,	E 1/2 NW, SW NW, NE SW, 12-7-7
Gibberd, Addie G.,	Lot 3 & 4 S 1/2 N 2-7-7
Gardner, C. M.,	SE 1/4 6-4-4
Gardner, Alfarata L.,	SW NE, SE NW, Lots 4 & 5 6-4-4
Gardner, Nathan M.,	SE SW, W 1/2 SE 33-5-4
Humphrey, Henry.,	E 1/2 NW 28; E 1/2 SW 21-7-5
Hoover, Sedwig.,	SW 1/4 28-6-6
Harrison, W. L.,	Lot 3, NE SW, NW SE, SW NE, 30-7-5
Hollister, J. M.,	SE 1/4 7-7-5
Hollister, Leonora.,	N 1/2 NE, SW NE, NW SE, 18-7-5

By Whom Entered.

Description :

Hamilton, J. H.,	E 1/2 NW, NE SW, NW NE, 22-7-5
Harbaugh, R. J.,	S 1/2 SW, NW SW, SW NW, 22-6-4
Horner, S. S.,	W 1/2 SW, SW NW, 26; NE SE 27-7-7
Horner, Hortense D.,	W 1/2 NE, E 1/2 nw 22-7-7
Hobbs, J. E.,	SW 1/4 29-6-8
Harrington, E. A.,	NE NW, N 1/2 NE 23; NW NW 24-7-8
Hansen, And.,	N 1/2 NE 22; S 1/2 SE 15-7-8
Hart, Fannie R.,	SW 1/4 11-7-8
Hart, I. W.,	NW 1/4 11-7-8
Holcomb, A. S.,	Lot 3-4-5-6 SE NW 22—N 1/2 SE, SE NE 21-5-4
Johnson, Oliver.,	SW 1/4 33-7-4
Judge, Wm.,	NE 1/4 29-6-6
Joplin, Walter.,	W 1/2 NE, SE NE, NE SE 20-7-8
Jaycox, Luella.,	Lot 4-5-6-7; 6-6-8
Jaycox, Orlin R.,	W 1/2 NE, E 1/2 NW 17-6-8
Joplin, Sonora A.,	SW 1/4 33-7-8
Joplin, A. F.,	Lot 1-2-3-4; 5-6-8
Kinert, L. T.,	SW 1/4 21-6-4
Kelly, T. F.,	SW 1/4 10-7-8
Kempner, H. M.,	W. 1/2 NE, SE NE 19; SW NW 20-7-8
Kempner, Annie R.,	NE 1/4 32-7-8
Kingsley, C. S.,	SW 1/4 14-7-8
Kingsley, Caro F. B.,	NW 1/4 14-7-8
Koppas, Michael.,	SE 1/4 12-7-5
Lane, Frank.,	E 1/2 NW, E 1/2 SW, 35-8-5
Lane, W. C.,	NW 1/4 28-6-6
Link, G. A.,	SW 1/4 24-7-5
Link, Mary.,	N 1/2 SE, 22; N 1/2 SW 23-7-5
Lewin, W. H.,	NE 1/4 32-6-6
Lewin, Gertrude.,	NE 1/4 28-7-5

By Whom Entered.	Description :
Lee, Lelia.,	SE 1/4 1-7-5
Lockhart, A. E.,	N 1/2 SE, SE SE 1—NE NE 12-6-7
Lake, Beulah B.,	NE 1/4 8-6-4
McDonald, J. G.,	W 1/2 NE, SE NW, NE SW, 31-7-5
McBirney, U. F.,	SE 1/4 11-7-5
McDonald, F. R.,	Lots 2 & 3 SW NE, SE NW 6-6-8
Marcum, Samuel.,	S 1/2 SE 7, S 1/2 SW 8-6-6
Monroe, Jno. C.,	NE 1/4 25-7-5
Monroe, Mary A.,	SE 1/4 24-7-5
Marcum, W. J.,	SW NW Lot 4-4-7-5; S 1/2 SW 33-8-5
Martin, Frank R.,	NE 1/4 21-6-4
Martin, Henrietta B.,	E 1/2 Nw, Lts. 1 & 2 7-7-8
Martin, Wm. H.,	SE 1/4 7-7-8
Martin, Wheeler H.,	SE 1/4 21-6-4
Martin, Bertha.,	Lot 1-2, S 1/2 NE 1-7-5
Martin, Thos. B.,	Lot 4, E 1/2 SW 31-7-8
Nickerson, F. B.,	E 1/2 NW, NW NE, Lot 1, 30-7-5
Nobler, Louis.,	SE 1/4 23-7-5
Nelson, Chas.,	NE 1/4 23-7-5
Noble, H. B.,	SW 1/4 28-6-4
Neil, Jno. M.,	N 1/2 ne, N 1/2 NW 25-7-8
Neil, Maud P.,	Lts. 1 & 2, S 1/2 NE, 4-7-8
Noble, W. F.,	NE 1/4 21-7-8
Nusbaum, J. V.,	S 1/2 NE, NW SE, NE SW, 24-7-8
Nusbaum, Pearl I.,	SE 1/4 22-7-8
Olson, Jens.,	SE 1/4 25-7-7
Ownbey, Mary E.,	Lot 2 SW NE W 1/2 SE 3-7-7
Ownbey, Harrison.,	SW 1/4 13-7-7
Ownbey, Aaron.,	E 1/2 SW, S 1/2 SE 9-7-8
Ownbey, James.,	NE 1/4 13-7-7
Ownbey, Jackson.,	NW 1/4 13-7-7

By Whom Entered.	Description :
O'Farrel, Evelyn.,	S 1/2 SE 26, N 1/2 NE 35-7-5
Pritchard, L. M.,	NW 1/4 20-6-6
Patterson, Chas.,	NW 1/4 33-6-6
Pearson, Margaret.,	SE SW 22—N 1/2 NW, NW NE 27-7-5
Pearson, Wm.,	NE 1/4 12-7-5
Penrod, J.,	NE 1/4 29-6-4
Powley, J. J.,	E 1/2 SE 32, W 1/2 SW 33-6-8
Parker, B. T.,	N 1/2 SE, S 1/2 NE, 9-7-8
Phelps, E. J.,	S 1/2 SE, NE SE, SE NE, 17-7-5
Rose, Jno. W.,	Lts. 1 & 2 S 1/2 NE 1-6-7
Rics, Henry.,	E 1/2 SW Lots 6 & 7, 6-7-6
Roberts, W. F.,	NW 1/4 25-7-5
Rothine, G. H.,	S 1/2 SW, S 1/2 SE 5-7-5
Ross, W. A.,	SE 1/4 20-6-4

By Whom Entered.	Description :
Ross, Josie M.,	SW 1/4 20-6-4
Reeves, W. R.,	NW 1/4 29-6-4
Resser, Burt.,	Lots 3 & 4, S 1/2 NW, 1-6-7
Stephenson, Lettie L.,	SE 1/4, 34-7-5
Stephenson, M. S.,	E 1/2 NE, 33, W 1/2 NW, 34-7-5
Snow, W. F.,	W 1/2 NW, W 1/2 SW, 22-7-5
Snow, Cleroia M.,	NE 1/4, 15-6-4
Scully, Margaret.,	NW 1/4, 20-6-4
Sensenig, E. S.,	S 1/2 SE, NE SE, SE NE, 26-7-8
Sensenig, Lucretia C.,	SW 1/4, 23-7-8
Schmelzel, Eliza.,	SE 1/4, 27-7-8
Stahl, Arietta.,	E 1/2 SW, Lts. 3-4, 7-7-8
Stahl, B. E.,	SW 1/4, 8-7-8
Sullivan, Helen.,	NW 1/4, 22-7-8
Sullivan, Jos.,	NE 1/4, 27-7-8
Starn, E. H.,	NW 1/4, 10-7-8

By Whom Entered.	Description :
Starn, Mary.,	SE 1/4, 10-7-8
Thurman, Fred.,	NE 1/4, 20-6-6
Thompson, D. G.,	SE 1/4, 26-8-5
Thompson, Nellie J.,	SE SW, Lot 4—30; NE NW Lot 1, 31-7-5
Thompson, Jennie E.,	SW NE, S 1/2 NW, 34-7-4
Thompson, Mary.,	E 1/2 NW, Lts. 1 & 2, 19-7-8
Twogood, M. L.,	NW 1/4, 13-7-8
Twogood, Ida.,	SW SE, S 1/2 SW 4; NW NW, 9-7-8
Thornton, D.,	SW SW 12; W 1/2 NW, SE NW, 13-5-3
Vance, S. E.,	NW 1/4, 29-6-8
Wilmot, Ery A.,	NW 1/4, 17-6-6
Walker, C. A.,	N 1/2 NW, N 1/2 NE, 8-7-5
Walker, W. S.,	SE 1/4, 31-6-6
Worthman, H. S.,	W 1/2 SW, NE SW, NW SE, 29-6-6
Woodmore, D. P.,	SE 1/4, 35-7-5
West, Dean.,	S 1/2 SE 28, S 1/2 SW, 27-7-5
West, Louisa B.,	NW 1/4, 23-7-5
Warren, G. S.,	E 1/2 NW, E 1/2 SW, 32-6-6
Wilmot, W. F.,	Lts. 3-4 & 5, SE NW, 6-7-6
Woodburn, J. K.,	SW 1/4, 15-6-4
Weasel, F. P.,	SE 1/4, 31-7-8
Wilson, Lena D.,	SE 1/4, 32-7-8
Wilson, W. L.,	Lot 1 & 2, E 1/2 NW, 31-7-8
Wilhite, G. F.,	SW 1/4, 32-7-8
Wilhite, Elizabeth.,	NE 1/4, 31-7-8
York, G. M.,	Lts. 1-2-3-4, 30-7-8
Youngkin, J. A.,	NE 1/4, 12-7-7
Youngkin, Susie A.,	Lts. 1-2, S 1/2 NE, 2-7-7
Young, N. H.,	S 1/2 NW, 17-7-5; SE NE, NE SE, 18-7-5

[Endorsed]: Filed Feb. 1, 1908 A. L. Richardson,
Clerk.

*In the Circuit Court of the United States of America,
Ninth Circuit, District of Idaho, Central
Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,
Defendants.

Motion to Dismiss.

Comes now the defendant, the Barber Lumber Company, by its counsel, C. T. Bundy, J. H. Hawley and Alfred A. Fraser, and moves this Honorable Court to dismiss the above-entitled action, for the reason that the plaintiff has failed to and neglected to file a replication in said cause within the time provided by law as provided by equity rule No. 66 .

C. T. BUNDY,

J. H. HAWLEY,

ALFRED A. FRASER,

Attys. for the Defendant, the Barber Lumber Company.

[Endorsed]: Filed Sept. 16, 1908. A. L. Richardson, Clerk.

At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, on Wednesday, the 16th day of September, 1908. Present: Hon. FRANK S. DIETRICH, Judge.

No. 47.

THE UNITED STATES

vs.

BARBER LUMBER CO. et al.

**Order Giving Plaintiff Leave to File Replication
Nunc Pro Tunc.**

On motion of the U. S. Attorney, it is ordered that said plaintiff have leave to file Replication herein as of February 29, 1908.

At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, on Thursday the 17th day of September, 1908. Present: Hon. FRANK S. DIETRICH, Judge.

No. 47.

THE UNITED STATES

vs.

BARBER LUMBER COMPANY et al.

**Order Setting Aside Order to File Replication Nunc
Pro Tunc, etc.**

On this day it was ordered that the order heretofore, to wit: on the 17th inst. allowing plaintiff to file Replication herein nunc pro tunc, as of February 29, 1908, be and the same is hereby set aside; thereupon said cause came on to be heard upon defendants' motion to dismiss said cause for failure to file Replication within the time allowed by law, and upon the plaintiff's motion for leave to file Replica-

tion nunc pro tunc, and after argument by C. T. Bundy, Esq., on behalf of defendants and by C. H. Lingenfelter, on behalf of plaintiff, the said motions were submitted and taken under advisement by the Court.

[Affidavit of C. H. Lingenfelter, U. S. Attorney.]

*In the Circuit Court of the United States, Ninth
Judicial Circuit for the District of Idaho, Cen-
tral Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINCAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER and HOR-
ACE S. RAND,

Defendants.

AFFIDAVIT OF C. H. LINGENFELTER, U.
S. DISTRICT ATTORNEY FOR IDAHO
OPPOSING MOTION FOR IMMEDIATE
TRIAL.

State of Idaho,
County of Ada,—ss.

C. H. Lingenfelter, being first duly sworn on oath
deposes and says; that he is the United States At-

torney for the District of Idaho and makes this affidavit for and on behalf of The United States of America, the complainant in the above-entitled action; that whereas on the 15th day of September, 1908, there was served on this affiant, and filed in the above-entitled court, a notice of motion in the above-entitled case, as follows:

“To the above-named plaintiff and its attorney, C. H. Lingenfelter and Peyton Gordon:

You, and each of you, are hereby notified that on Wednesday, the 16th day of September, 1908, at two o'clock P. M. of said date, or as soon thereafter as counsel for the defendant, the Barber Lumber Company, can be heard, they will move the Court to dismiss the above-entitled action as to it for the reason that no replication has been filed in said cause by said plaintiff within the time provided by law, and the rules of court.

(Signed)

C. T. BUNDY,

J. H. HAWLEY,

ALFRED A. FRASER,

Attys. for defendant, the Barber Lumber Company.”

This affiant thereupon presented to the Court its replication as to the above-named defendant and asked that it be filed nunc pro tunc as of date February 29, 1908; that this affiant represents to the Court that the answer of said defendant, the Barber Lumber Company was filed in this case on the first day of February, 1908, and at a time when N. M. Ruick was the U. S. Attorney for Idaho; that said attorney

neglected for some reason, unknown to this affiant, to file a replication to the answer and that this affiant did not qualify under his appointment to succeed Mr. Ruick until June 19th, 1908, a period long after the time for the filing of such replication under the equity rules, and that affiant had no knowledge that such replication had not been filed until same was called to his attention by the filing and service of the notice of motion for dismissal of the suit for the want of such replication; that the defendant relying upon equity rule No. 66 now seeks to force the complainant to a speedy trial and the other conditions imposed thereunder as a penalty for the non-filing of said replication in time and that as a condition of allowing complainant to file such replication demands that complainant submit to a speedy trial, and other conditions that the court may impose under the rule; that affiant is in no way responsible for the failure to file said replication in time and that affiant is wholly unprepared to try the above-entitled case within the time demanded by the defendant, the Barber Lumber Company, to wit: within or at the expiration of the next ninety days, as suggested to the Court by the counsel for the defendant aforesaid; that if the Court should set the said case for trial at the time suggested by counsel, for defendant, this affiant would be wholly unable to try the same on the part of the complainant for the reason that he is wholly unfamiliar with the case, has no knowledge of what witnesses or testimony the Government may have and has had, and now has, no opportunity to ascertain the character of such testi-

mony, the witnesses to give the same, or their place of residence; that there is now pending before this court and in the Circuit Court at Madison, Wisconsin, criminal proceedings for conspiracy to defraud the Government out of large tracts of land and out of which criminal proceedings, the present suit to cancel patents arose; that such testimony gathered in such criminal cases is necessary as a guide for the preparation of testimony and the summoning of necessary witnesses and as affiant is informed and believes is the only record that the complainant has of such testimony and that such testimony is now being used by the Government in said criminal cases and is at this time out of the custody of this affiant and not available for his use and will not be until the termination of said criminal cases; that such testimony was gathered at great expense and labor on the part of the Government and covering a long period of time and that to compel the Government to regather such testimony in duplicate would be working a great hardship, expense, and involve great labor and require much time for such purpose; that affiant is wholly unfamiliar with the facts in said case and that as affiant is informed and believes the only way that he can become familiar with the facts, the testimony to be used and the names and whereabouts of the witnesses who will give such testimony is by the use and control of the said testimony, so gathered aforesaid, that is now in the custody and use of the said attorneys prosecuting such criminal action against the defendants from whom the defendant, the Bar-

ber Lumber Company, deraigned its title; that affiant is engaged in many cases in which the complainant is a party and will be so engaged until on or about the first day of December, 1908, and many of these cases are of a criminal nature and many of the defendants thereto are now in custody awaiting trial; that as to the time necessary for the preparation and trial of this said cause in which the said Barber Lumber Company is defendant, this affiant cannot say but affiant says that the complainant has used and will use all due diligence and make every effort to speed the preparation and trial of said cause through this affiant and its other agents consistent with the exigencies of its manifold duties, necessities and contingencies over which it may have no control.

C. H. LINGENFELTER.

Subscribed and sworn to before me this 19th day of September, A. D. 1908.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed Sept. 22, 1908. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Central Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINCAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER and HOR-
ACE S. RAND,

Defendants.

Opinion on Motion to Dismiss.

U. S. District Attorney C. H. LINGENFELTER,
For Complainant,

C. T. BUNDY, Esq., J. H. HAWLEY, Esq., and
ALFRED A. FRASER, Esq.,

For Defendants.

DIETRICH, District Judge:—

By its bill complainant seeks to have vacated and set aside a large number of patents to timber lands, which it is averred were procured through the operation of a fraudulent conspiracy entered into by the defendants and others, the title to all the lands having, subsequent to patent, been conveyed to the defendant, Barber Lumber Company. The bill was filed April 17th, 1907. Subpoena issued December 4th, 1907, and upon the same day service was made upon the Barber Lumber Company, and upon two of

the other defendants. Apparently no effort has been made to procure further service, and, indeed, it seems to be conceded that the Barber Lumber Company is the only necessary party defendant. In due time the Barber Lumber Company appeared, and upon February 1st, 1908, it filed and served its answer, denying the equities of the bill. No replication having been filed, the defendant, on September 16th, 1908, filed a motion to dismiss the suit on account of complainant's default in that respect. Upon the presentation of the motion in open court on the following day, counsel for the Government tendered for filing its replication, with the request that it be filed *nunc pro tunc*, that is, as of the next succeeding rule day after the filing of the bill, as provided in general equity rule No. 66. Thereupon it was stated upon behalf of the defendant that it desired only that the suit be finally submitted upon its merits as early as practicable, and that it would not press its motion for dismissal, provided complainant would file its replication and agree to speed the cause, no other terms being demanded. To this condition counsel for the Government was unwilling to assent, and was unable to advise the Court of any date when the taking of testimony could be commenced or concluded. The Court having intimated that it was disposed to direct the filing of the replication, but that the Government, as a litigant, is, in matters of procedure, required substantially to conform to the rules which have been promulgated for the guidance of the courts and litigants, the District Attorney, explain-

ing that the default had occurred prior to his appointment, and being surprised by the defendant's motion, asked leave to make a showing and furnish a brief, which was granted. In addition to filing an affidavit, in which certain conditions are set forth which it is thought appeal to the discretion of the Court, and which will later be noticed, there is presented an elaborate brief, in which it is contended "that in the matter of practice and the rules of court" * * * "the Government (using the precise language of counsel) not only does not stand before the Court in the same light as an individual suitor, but that it has privileges and immunities which, of necessity, are prerogatives of government; that it is not bound by the acts of its agents' negligence, even if such acts are wilful; that time does not run against it, and that laches cannot be imputed to it. This doctrine is derived from a principle of public policy, and comes down even in Republican forms of government from a basic principle of monarchy that: 'The King can do no wrong.' "

It must be noted that this is not a plea to the Court to relieve complainant from a default into which it has fallen through the inadvertence or neglect of its former district attorney; such relief is not resisted by defendant, and the Court has already intimated that it would be granted. It is not an appeal to the Court to exercise its discretion in granting to complainant such time, in excess of the ninety days prescribed by the rules for the taking of evidence, as may, under all the circumstances of the case, be reasonably necessary. Upon the other

hand, it is a negation of the necessity for such application. The premise is that complainant is above and exempt from the rules of court; and it logically and necessarily follows that, not being subject to a rule, it cannot be held to be in default for any failure to conform thereto; and not being amenable to the rules limiting the time for taking evidence, there is no necessity for its seeking an enlargement of the prescribed time. Nor is it suggested that, while generally bound to comply with the rules of the court, the Government, for some specific reason, is relieved from the operation of the particular rule under consideration. The proposition is a declaration of the independence of the Government from all rules. To such a view I am unable to give my assent. It is utterly at variance with fundamental principles, and is impossible in practice. If the litigant is sovereign the court is subject. It is the sworn duty of the judge "to administer justice without respect to persons"; rank cannot be recognized. How can rights be correctly weighed if one party is permitted to lay his hand upon the balance? It will not do to say that the Government will act justly; if so, it should be left to adjudge its own controversies without the intervention of the courts. Nor is it material that the prerogatives of sovereignty are claimed only as to the rules of practice and procedure. Time and mode of the trial of a right are, not infrequently, of the substance of the right itself. Delay may mean disaster, especially to the weaker party. "To none will we sell, to none will we deny, or delay, right or justice"; so reads

the Great Charter. It is a mistake to assume that rules of procedure are mere formalities, adopted with the view only to the convenience and dignity of the courts. They are intended to promote the more perfect administration of justice, and experience demonstrates that the courts can best fulfill their functions by exacting substantial compliance therewith.

An individual cannot maintain an action against the Government, but this exemption may be waived. So the Government may voluntarily come into court seeking relief against an individual. It comes, however, not as a sovereign, but as a suitor. Within its own domain the court is supreme. The Government, having a controversy, may invoke the assistance of the courts, but in entering their portals it voluntarily divests itself of sovereignty, submits itself to their jurisdiction, and consents to conform to their rules and abide by their decrees.

Looking at the question in another aspect, it is not doubted that Congress, by direct enactment, may subject the Government to the process of the courts and prescribe the procedure to which it must conform as a party litigant. But by Section 917 of the Revised Statutes Congress, doubtless appreciating the difficulty of devising direct legislation of sufficient elasticity and adaptability, conferred upon the Supreme Court of the United States the power "generally to regulate the whole practice, to be used, in suits in equity or admiralty by the Circuit and District Courts"; and by Section 918, a like power was conferred upon the Circuit and District Courts

“to regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in the proceedings,” not inconsistent with any law of the United States, or any rule prescribed by the Supreme Court. From time to time the Supreme Court of the United States has, pursuant to the authority thus conferred upon it, promulgated rules for the guidance of the courts, one of which is equity rule No. 66. These rules have the force and effect of law. *American Graphophone Company v. National Phonograph Company*, 127 Fed. 349. “No District or Circuit Court of the United States has the power to adopt a practice inconsistent with those rules or to disregard their provisions.” *Northwestern Insurance Company v. Keith*, 77 Fed. 374.

“Parties to suits in Louisiana (as in all other jurisdictions) have a right to the benefit of these rules; nor can they be denied by any rule or order, without causing delays, producing unnecessary and oppressive expenses, and, in the greater number of cases, an entire denial of equitable rights.” *Gaines v. Relf*, 15 Pet. 9.

Counsel remark the absence from the reports of any case directly in point, and cite only decisions affirming the proposition that generally, in the matter of substantive rights, statutes of limitation and the doctrine of laches, cannot be invoked against the sovereign. These are familiar exceptions to general rules, and are based upon considerations wholly inapplicable to court procedure; in none of the numerous decisions cited is there any intimation that the

exceptions are to be extended to embrace violations of the rules of practice and procedure in the courts. Indeed, the books do not seem to contain any case where a proposition like that here asserted has been put forward, and it is incredible that if the Government has such extraordinary prerogatives, it has heretofore apparently neglected to assert them. In no case which has come under my observation, where the Government is a party, has any distinction been made in exacting compliance with the rules, because of its sovereignty. Doubtless, where discretion is left to the court, it may properly take into consideration the conditions under which the Government must act, the fact that it must employ agents in various degrees of subordination, and that in some matters it cannot proceed as expeditiously as may private individuals; such considerations do not look to the suspension of the rules, but only to their reasonable enforcement. Distinctions of the same or similar character, and for like reasons, might properly be made, where all parties are either natural persons or private corporations.

In *United States v. Fremont*, 59 U. S. 30, the appeal of the Government was dismissed by the Supreme Court because it had failed to file the record within the first six days of the term, as required by the rules of the court.

In *United States v. Pacheoco*, 61 U. S. 261, the appeal of the United States was dismissed for failure to comply with the rules of the court.

A like penalty for a similar default was imposed upon the Government in *United States v. Gomez*, 64

U. S. 326.

In *United States v. Atherton*, 102 U. S. 372, impliedly it is held that the Government is bound by the same rules of pleading as apply to private litigants; the court refused to interfere with the action of the trial court in denying the application of the Government to be permitted to amend its bill. There is no suggestion that as a party in court the Government occupies a favored position.

See, also *United States v. Ames*, 99 U. S. 35.

In *United States v. Lee Yen Tai*, 113 Fed. 465, the Circuit Court of Appeals declined to consider the errors assigned by the Government, because the assignments did not comply with the rules of the court.

In *United States v. Rossi*, 133 Fed. 380, the Circuit Court of Appeals of this Circuit enforced its rule No. 10 against the Government, by refusing to consider its exceptions to the charge of the trial court, because they did not comply with the requirements of the rule.

In *United States v. Mitchell*, 9 Pet. 743, the Supreme Court refused the application of the Government for further time in which to produce proofs.

In *Mountain Copper Company v. United States* (C. C. A. Ninth Circuit), 142 Fed. 625, it is said: "It is the well-established law that, when the Government comes into a court asserting a property right, it occupies the position of any and every other suitor. Its rights are precisely the same; no greater, no less." It is true that this language was not used with specific reference to matters of practice or procedure, but it is thought to be a statement of the general rule,

subject only to certain recognized exceptions.

In *The Siren*, 74 U. S. 152, it is said: "But although direct suits cannot be maintained against the United States, or against their property, yet when the United States institute a suit they waive their exemption so far as to allow the presentation by the defendant of setoffs, legal and equitable, to the extent of the demand made or property claimed, and when they proceed in rem they open to consideration all claims and equities in regard to the property libelled. They then stand in such proceedings, with reference to the rights of defendants or claimants, precisely as private suitors, except that they are exempt from costs and from affirmative relief against them, beyond the demand or property in controversy."

In *United States v. Stinson*, 197 U. S. 200, the Supreme Court, in speaking of the only matters of practice under consideration, said: "The Government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumption of law and fact, that attend the prosecution of a like action by an individual." See, also, *Carr v. United States*, 98 U. S. 433; *United States v. Smith*, 94 U. S. 214; *United States v. Stinson*, 125 Fed. 907; *United States v. Beebee*, 17 Fed. 36; *United States v. Ingate*, 48 Fed. 251.

Turning now to those features of the case which appeal to the Court's discretion, what order should be entered? Upon behalf of complainant it is urged that the default occurred prior to the appointment of the present district attorney; that he has not yet had time to familiarize himself with all the business

pending in his district; that the issues involve numerous transactions, and the trial will necessitate the taking of much testimony from many witnesses; and that for a portion of the time prior to December 1st the district attorney must give his attention to the trial of criminal cases.

It is also suggested that, at the time the motion was made, some of the record evidence was not in the custody of the district attorney, but was being used by the Government in proceedings pending in Wisconsin, looking to the removal of some of the officers of the defendant company to this jurisdiction for trial on criminal charges growing out of the transactions referred to in the bill; but manifestly this is but a temporary condition, and no difficulty should be experienced in procuring a return of the originals, or, if they are still unavailable, of securing certified copies thereof.

It is further suggested that the taking of testimony should await the final determination of the pending criminal proceedings, but whatever, if any, valid reasons there may be, at one time, have been for taking such a course, they are no longer persuasive. Upon the trial of one of the criminal cases growing out of these transactions more than a year ago, the Government, of necessity, in a large measure, disclosed its case against the other defendants, who have not yet been tried. Furthermore, the trial of still another defendant has been set for an early date, at which time it will doubtless be necessary for the Government again to traverse the ground and make public the facts in its possession.

Upon the other hand, it is represented that the Government has not used, and is not using, diligence in the prosecution of the suit; that nearly eighteen months have elapsed since the suit commenced, and nearly eight months since answer was filed; that the pendency of the suit casts a cloud upon the defendant's title; that it has erected a lumber manufacturing plant, at an expense of several hundred thousand dollars; and that, for its successful operation, it is necessary to build a railroad into the timber lands; that the attack upon its title hopelessly impairs its credit and renders it impossible to procure funds for the construction of such a road; that it is paying taxes upon the lands; and that the standing timber is subject to, and must be protected against, the ravages of forest fires.

I have considered both the conveniences and the necessities of the parties, and it is my conclusion that the replication be filed nunc pro tunc; that the complainant be given until and including January 15th, 1909, in which to take its evidence; and that the defendant, Barber Lumber Company, be given thirty days thereafter, in which to take its evidence; and that the complainant have fifteen days thereafter in which to take evidence in rebuttal. An order will be entered accordingly.

Dated October 3, 1908.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed October 3, 1908. A. L. Richardson, Clerk.

**[Order Denying Motion to Dismiss and Relative to
Filing of Replication and Taking of Testimony.]**

At a stated term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Saturday the 3d day of October, 1908.
Present: Hon. FRANK S. DIETRICH, Judge.

No. 47.

THE UNITED STATES OF AMERICA

vs.

BARBER LUMBER COMPANY et al.

On this day was announced the decision of the Court upon the motion of defendant, Barber Lumber Company, to dismiss this cause and upon plaintiff motion for leave to file a replication herein nunc pro tunc, which decision is in writing and is to the effect that said motion to dismiss be denied and the motion for leave to file replication nunc pro tunc be allowed, and it is thereupon ordered that defendants' motion to dismiss be and is hereby denied and the motion for leave to file replication herein nunc pro tunc be and is hereby allowed. That the complainant be given until and including January 15th, 1909, in which to take its evidence; and that the defendant, Barber Lumber Company be given thirty days thereafter in which to take its evidence, and that the complainant have fifteen days thereafter in which to take evidence in rebuttal.

*In the Circuit Court of the United States, Ninth
Judicial Circuit, for the District of Idaho, Cen-
tral Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINCAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER and HOR-
ACE S. RAND,

Defendants.

Replication.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefits and advantage of exception which may be had and taken to the manifold insufficiencies of the said answer of the defendant, Barber Lumber Company, a corporation, for replication thereto, says that it will aver, maintain, and prove its bill of complaint to be true, certain and sufficient in the law to be answered unto, and that said answer of said defendant, Barber Lumber Company, a corporation, is uncertain, untrue and insufficient to be replied unto by repliant without this; that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto,

confessed and avoided, traversed or denied, is true, all which matters and things the repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct and humbly prays as in and by its said bill it hath already prayed.

C. H. LINGENFELTER,

United States Attorney for the District of Idaho
and Solicitor for Plaintiff.

[Endorsed]: Filed Oct. 3, 1908. As of February 29, 1908. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the
District of Idaho, Central Division.*

THE UNITED STATES,

Complainant,

vs.

BARBER LUMBER COMPANY et al.,

Defendants.

Order Extending Time to Take Testimony.

Upon an application of the complainant for an extension of time in which to complete the taking of its testimony, Mr. C. H. Lingenfelter, United States District Attorney, and Mr. Payton Gordon, Special Assistant to the Attorney General, being present upon behalf of the Government, and A. A. Fraser, Esq., representing the defendants;

Upon agreement of counsel present, it is ordered that the time heretofore given, to wit, by an order entered October 3d, 1908, be extended thirty days, that is, that the time fixed by said order for each of

said parties to complete the taking of testimony be postponed to a date thirty days after the date therein specified.

Dated December 29th, 1908.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Dec. 29, 1908. A. L. Richardson, Clerk.

At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, on Saturday the 9th day of January, 1909. Present: Hon. FRANK S. DIETRICH, Judge.

No. 47.

THE UNITED STATES OF AMERICA

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON
et al.

**Order Giving Plaintiff Leave to File Amended Bill
of Complaint.**

Counsel for the complainant and said defendants being present in open court and the service of an engrossed copy of the amended bill being waived for the present, and notice being waived, pursuant to an agreement in open court by said counsel.

It is ordered that the complainant, the United States of America, be and it hereby is, given leave to amend its bill of complaint herein by setting out and

charging, in appropriate language, that one John I. Wells and one Frank Steunenberg, were parties to said conspiracy and the agreements, and acted in furtherance, and pursuance of said conspiracy and agreements set up, referred to, and alleged in said bill of complaint; and to correct typographical errors in the names of any persons or descriptions of property appearing in said original bill of complaint.

No. 47.

THE UNITED STATES OF AMERICA

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
et al.

Order Appointing John T. Morgan Special Examiner.

Both parties having requested the Court to appoint an Examiner in this cause. It is hereby ordered that John T. Morgan, Esq., be and he hereby is appointed Special Examiner herein to take the testimony and report the same to the Court with all convenient speed and it is ordered that the clerk furnish said Examiner with a copy of the Amended Complaint and Answer in said cause.

*In the Circuit Court of the United States, Ninth
Circuit, District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINKAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER and
HORACE S. RAND,

Defendants.

Amended Bill in Equity.

To the Honorable Judges of the Circuit Court of the
United States, for the District of Idaho:

Now comes Charles J. Bonaparte, the Attorney
General of the United States, for and on behalf of
the United States, complainant, and with leave of
the Court first had and obtained, makes and files
this amended bill of complaint against the Barber
Lumber Company, a corporation organized and ex-
isting under the laws of the State of Wisconsin,
James T. Barber and Sumner G. Moon, citizens and
residents of the State of Wisconsin, William Sweet,
a citizen and resident of the State of Oregon, John
Kinkaid, a citizen and resident of the State of
Nevada, Louis M. Pritchard, a citizen and resident
of the State of California, Patrick H. Downs, a
citizen and resident of the State of Idaho, Albert E.
Palmer, formerly a citizen of the State of Wash-

ington, but whose residence is now unknown, and Horace S. Rand, a citizen and resident of the State of Iowa, and thereupon complains and says:

FIRST.

That prior to the acts hereinafter complained of, the complainant was the owner of the lands hereinafter described, the said lands constituting a part of the public domain and situated within the State and District of Idaho.

That by an Act of Congress of the United States, entitled "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as amended and extended to all public land states by the Act of Congress of August 4, 1892, it was provided among other things in substance that surveyed public lands of the United States within the public land States, valuable chiefly for timber but unfit for cultivation, might be sold to citizens of the United States or persons who had declared their intention to become such, in quantities not to exceed 160 acres to any one person or association of persons, at the minimum price of Two Dollars Fifty Cents (\$2.50) per acre;

It was further provided in said Act as follows:

"That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivision the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable

chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself”;

—which statement was required by said Act to be verified by the oath of the applicant before the register or receiver of the land office within the district where the land was situated;

And said Act further provides that:

“If any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.”

And said Act further provided that after the expiration of 60 days’ publication of said application,

“The person desiring to purchase shall furnish to

the register of the land office satisfactory evidence,
* * * that the land is of the character contemplated in this Act unoccupied and without improvements other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and receiver, * * * the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon."

Said Act further provided that effect should be given to its provisions by regulations to be prescribed by the commissioner of the General Land Office.

SECOND.

That pursuant to the authority given by said Act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said Act, among others, the following:

That after the expiration of the 60 days' publication, the person desiring to purchase the land described in his application to purchase should, under oath, make answer to certain questions as follows:

"Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title which you may ac-

quire from the Government of the United States may, inure, in whole or in part to the benefit of any person except yourself?"

And:

"Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?"

And:

"Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?"

Also the following:

"Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?"

And:

"Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?"

THIRD.

That the said defendants, the Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, intending to defraud complainant out of large tracts of its valuable public lands, did combine, conspire, confederate and agree together and with Frank Steunenberg, now deceased, and one John I. Wells, and with the parties hereinafter

named, and other parties not necessary to be named and did devise a plan and method whereby unlawfully and fraudulently, by means of fraud, perjury and subornation of perjury, and other unlawful methods, they might unlawfully and fraudulently procure for themselves and for their own use, benefit and pecuniary advantage, large quantities of said public lands.

Said unlawful and fraudulent means consisted in procuring persons to avail themselves of the provisions of the Act of Congress hereinbefore referred to, by filing the written statement, and doing the other things required by said act and the regulations of the Commissioner of the General Land Office, applicable to said proceeding, under an agreement then and there and theretofore had and entered into between said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, and Horace S. Rand, Frank Steunenberg, John I. Wells, and divers of said persons, wherein and whereby they, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, Frank Steunenberg and John I. Wells agreed to purchase said lands described in the respective statements and applications of said applicants as soon as said applicants should secure title thereto; and in divers other instances, said unlawful and fraudulent means consisted in procuring persons to avail themselves of the pro-

visions of the Act of Congress hereinbefore referred to, by filing the written statement, and doing the other things required by said act and the regulations of the Commissioner of the General Land Office, applicable to said proceeding, under an agreement then and there and theretofore had and entered into between said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand and Frank Steunenberg, John I. Wells and divers of said persons, wherein and whereby they, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand and Frank Steunenberg, John I. Wells agreed to furnish or procure to be furnished and supplied to said applicant the amount of money necessary to pay all expenses in connection with making said filing and procuring title to said lands under said act, including the sum necessary to pay for said land; whereupon said applicant, as soon as he should obtain title to said lands from the United States, was to deed the said lands to said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, Frank Steunenberg, John I. Wells, or either of them, or to some person designated by them or either of them, and the said Barber Lumber Company, a corporation, James T. Barber, Sumner G.

Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, and Frank Steunenberg and John I. Wells, were thereupon to pay or procure to be paid to said applicant, a sum theretofore, at the making of the agreement aforesaid, decided upon and promised to be paid.

FOURTH.

That pursuant to said unlawful and corrupt conspiracy and agreement, and to carry out and effect the object and purpose thereof, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, and Frank Steunenberg and John I. Wells did unlawfully, falsely, fraudulently and corruptly induce and procure Nellie J. Thompson, John G. McDonald, Dean West, Louisa B. West, Daniel P. Woodmore, Charles Nelson, William Pearson, Margaret Pearson, Lelia Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, George M. Cutler, Thaddeus M. Glass, Harry L. Clyne, Louis Nibler, John U. Cassell, Oliver Johnson, Edward Brisbin, William W. Abrams, Samuel C. Bowen, Homer C. Granger, Lewis K. Burns, John M. Byro, William F. Snow, Lewis L. Folsom, Joseph M. Hollister, Leonora Hollister, Charles A. Walker, Henry F. Benedix, Uriah F. McBurney, William J. Marcum, Samuel Marcum, Walter L. Harrison, James O. Baker, Henry Humphrey, Charles W. Balentine, M. Laeta Eagleson, Norman H. Young, Frank B. Nickerson, Lettie L. Stephen-

son, Martin S. Stephenson, Gertrude A. Lewin, William H. Lewin, Altha Gillum, Mack Gillum, John R. Gary, Frank Lane, Uriah Flint, David G. Thompson, Samuel Greig, Sarah Greig, Gustav H. Rothine, William F. Roberts, Patrick H. Downs, John C. Monroe, Mary A. Monroe, James H. Hamilton, Michael Koppas, Jennie E. Thompson, Albert B. Ewing, Clara B. Ewing, Bertha Martin, Edward J. Phelps, John Bates, William H. Martin, Henrietta B. Martin, Jens Olsen, Evelyn O'Farrell, Oliver Johnson, Charley Patterson, George S. Warren, George H. Ensworth, William C. Lane, Ery A. Wilmot, Harry S. Worthman, Edward E. Butler, Wilbert F. Wilmot, John D. French, Adella C. Brookhart, Homer G. Allen, Walter S. Walker, Joseph French, Louis M. Pritchard, William Judge, Smith Barker, Sedwig Hoover, Henry Rics, John W. Rose, Frederick Thurman, Victoria L. Eoff, Harry S. Worthman, Charles W. Balentine, Burt Resser, Edward A. Lockhart, Frank R. McDonald, Luella Jaycox, Orlin R. Jaycox, Benjamin R. Allen, Samuel E. Vance, John E. Hobbs, John J. Powley, Louise E. Butler, Elvie M. Butler, Alice Fordney, Henry Bayhouse, Alfred Bayhouse, Frank Bayhouse, George Bayhouse, Moses H. Kempner, Annie E. Kempner, Merritt L. Twogood, Ida Twogood, Delilah Bayhouse, Andrew Hansen, Emerson Sensenig, Lucretia C. Sensenig, Jacob V. Nusbaum, Pearl I. Nusbaum, Benjamin C. Eagleson, Charles H. Eagleson, Harry K. Eagleson, Helen E. Eagleson, George T. Ellie, Mary Thompson and T. S. Thompson, General L. Willhite, Elizabeth Willhite, Emma Bilderback,

William F. Noble, Caroline F. Alexander, Charles R. Beckley, Mantie Beckley, Elizabeth Schmelzel, Jeanette B. Cooper, James F. Belk, Arietta H. Stahl, Benjamin E. Stahl, Lena D. Wilson, Walter L. Wilson, Helen Sullivan, Joseph Sullivan, William H. Martin, Henrietta B. Martin, Elma E. Gardner, George W. Butler, Edgar E. Bush, Sonora A. Joplin, Andrew F. Joplin, Walter Joplin, Frank P. Weasel, George M. York, Earl A. Harrington, Samuel S. Horner, Hortense D. Horner, Samuel M. Blandford, Emma Lou Blandford, William C. Austin, Ada V. Austin, Clifton C. Bliven, Susie A. Youngkin, John A. Youngkin, William E. Cavanaugh, William H. Gibbard, Elof Anderson, Emma M. Anderson, Burt T. Parker, Jackson Ownbey, Harrison F. Ownbey, James Ownbey, Mary E. Ownbey, Thomas F. Kelly, John M. Neil, Maud Pitman Neil, Addie G. Gibbard, Edward H. Starn, Mary Starn, Aaron Ownbey, Edward J. Dockery, Eva Hunt Dockery, Irving W. Hart, Fannie R. Hart, Charles S. Kingsley, Caro F. B. Kingsley, Andrew Campbell, Joseph Penrod, Wilbert R. Reeves, Charles B. Farraday, Willis A. Ross, Josie M. Ross, Lorin T. Kinert, Clara M. Snow, Harry S. Noble, George E. Eagleson, Mary J. Eagleson, Anna Fisher, Alexander T. Ellis, Joseph Ehrmanntrant, Margaret M. Ehrmanntrant, Charles W. Clawson, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, John K. Woodburn, William B. Davidson, Rice J. Harbaugh, Margaret Scully, John J. Blake, Dennie Thornton, Albert S. Holcomb, Beulah B. Lake, Abbie M. Briggs, Nathan M. Gard-

ner, Clinton M. Gardner, and Alfarata L. Gardner and divers other persons not necessary to be named, here, to apply at the United States Land Office at Boise, Idaho, in the land district where said lands are situated, under the provisions of the Act of Congress aforesaid and pursuant to and for the purpose of carrying out the said unlawful, fraudulent and corrupt conspiracy and agreement aforesaid and for the purpose of obtaining title to large tracts of the public timber lands of the United States as aforesaid, did cause, induce and procure the said parties, and each of them, to appear before the register or receiver of the United States Land Office at Boise, Idaho, and each to make and subscribe, and make oath to the written statement required by said act of persons desiring to avail themselves of the provisions thereof, and did cause, induce and procure the said persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he, the applicant, did not apply to purchase the land described in his said statement, on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States Land Office.

That, thereafter, pursuant to said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof, and to carry out and effect the object and purpose thereof, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, Frank Steunenberg and John I. Wells did induce and procure the persons hereinbefore named, and each of them to appear before the Land Office of the United States at Boise, Idaho, and to answer certain questions hereinbefore in this complaint set out, prescribed by the Commissioner of the General Land Office, pursuant to the authority contained in the act aforesaid, and each of said persons then and there by the procurement of the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, Frank Steunenberg and John I. Wells, did answer said questions in substance and to the effect that he had not sold or transferred his claim to the land for which he made application to purchase since making his sworn statement, or had not directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself and that he made his entry in good faith for the appropriation of the land exclusively to his own use and not for the

use or benefit of any other person, that no other person than himself, nor any firm, corporation or association had any interest in the entry which he was then making, or in the land or in the timber thereon, that he paid out of his own individual funds all the expenses in connection with making said filing, and that he expected to pay for the land with his own money.

FIFTH.

That the statements so made by the said Nellie J. Thompson, John G. McDonald, Dean West, Louisa B. West, Daniel P. Woodmore, Charles Nelson, William Pearson, Margaret Pearson, Lelia Lee, Arthur E. Brookhart, Gustav A. Link, Mary Link, George M. Cutler, Thaddeus M. Glass, Harry L. Clyne, Louis Nibler, John U. Cassell, Oliver Johnson, Edward Brisbin, William W. Abrams, Samuel C. Bowen, Homer C. Granger, Lewis K. Burns, John M. Byro, William F. Snow, Lewis L. Folsom, Joseph M. Hollister, Leonora Hollister, Charles A. Walker, Henry F. Benedix, Uriah F. McBurney, William J. Marcum, Samuel Marcum, Walter L. Harrison, James O. Baker, Henry Humphrey, Charles W. Balentine, M. Laeta Eagleson, Norman H. Young, Frank B. Nickerson, Lettie L. Stephenson, Martin S. Stephenson, Gertrude A. Lewin, William H. Lewin, Altha Gillum, Mack Gillum, John R. Gary, Frank Lane, Uriah Flint, David G. Thompson, Samuel Greig, Sarah Greig, Gustav H. Rothine, William F. Roberts, Patrick H. Downs, John C. Monroe, Mary A. Monroe, James H. Hamilton, Michael Koppas, Jennie E. Thompson, Albert B. Ewing, Clara B. Ewing,

Bertha Martin, Edward J. Phelps, John Bates, William H. Martin, Henrietta B. Martin, Jens Olsen, Evelyn O'Farrell, Oliver Johnson, Charley Patterson, George S. Warren, George H. Ensworth, William C. Lane, Ery A. Wilmot, Harry S. Worthman, Edward E. Butler, Wilbert F. Wilmot, John D. French, Adella C. Brookhart, Homer G. Allen, Walter S. Walker, Joseph French, Louis M. Pritchard, William Judge, Smith Barker, Sedwig Hoover, Henry Rics, John W. Rose, Frederick Thurman, Victoria L. Eoff, Harry S. Worthman, Charles W. Balentine, Burt Resser, Edward A. Lockhart, Frank R. McDonald, Luella Jaycox, Orlin R. Jaycox, Benjamin R. Allen, Samuel E. Vance, John E. Hobbs, John J. Powley, Louise E. Butler, Elvie M. Butler, Alice Fordney, Henry Bayhouse, Alfred Bayhouse, Frank Bayhouse, George Bayhouse, Moses H. Kempner, Annie E. Kempner, Merritt L. Twogood, Ida Twogood, Delilah Bayhouse, Andrew Hansen, Emerson Sensenig, Lucretia C. Sensenig, Jacob V. Nusbaum, Pearl I. Nusbaum, Benjamin C. Eagleson, Charles H. Eagleson, Harry K. Eagleson, Helen E. Eagleson, George T. Ellie, Mary Thompson and T. S. Thompson, General L. Willhite, Elizabeth Willhite, Emma Bilderback, William F. Noble, Caroline F. Alexander, Charles R. Beckley, Mantie Beckley, Elizabeth Schmelzel, Jeanette B. Cooper, James F. Belk, Arietta H. Stahl, Benjamin E. Stahl, Lena D. Wilson, Walter L. Wilson, Helen Sullivan, Joseph Sullivan, William H. Martin, Henrietta B. Martin, Elma E. Gardner, George W. Butler, Edgar E. Bush, Sonora A. Joplin, Andrew F. Joplin, Walter Joplin,

Frank P. Weasel, George M. York, Earl A. Harrington, Samuel S. Horner, Hortense D. Horner, Samuel M. Blandford, Emma Lou Blandford, William C. Austin, Ada V. Austin, Clifton C. Bliven, Susie A. Youngkin, John A. Youngkin, William E. Cavanaugh, William H. Gibbard, Elof Anderson, Emma M. Anderson, Burt T. Parker, Jackson Ownbey, Harrison F. Ownbey, James Ownbey, Mary E. Ownbey, Thomas F. Kelly, John M. Neil, Maud Pitman Neil, Addie G. Hibbard, Edward H. Starn, Mary Starn, Aaron Ownbey, Edward J. Dockery, Eva Hunt Dockery, Irving W. Hart, Fannie R. Hart, Charles S. Kingsley, Caro F. B. Kingsley, Andrew Campbell, Joseph Penrod, Wilbert R. Reeves, Charles B. Faraday, Willis A. Ross, Josie M. Ross, Lorin T. Kintert, Clara M. Snow, Harry S. Noble, George E. Eagleson, Mary J. Eagleson, Anna Fisher, Alexander T. Ellis, Joseph Ehrmanntrant, Margaret M. Ehrmanntrant, Charles W. Clawson, George R. Avery, Frank R. Martin, Wheeler H. Martin, Thomas L. Martin, John K. Woodburn, William B. Davidson, Rice J. Harbaugh, Margaret Scully, John J. Blake, Dennie Thornton, Albert S. Holcomb, Beulah B. Lake, Abbie M. Briggs, Nathan M. Gardner, Clinton M. Gardner, and Alfarata L. Gardner, and by each of them, were false, fraudulent and untrue, and were known to the said persons and to the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, Frank Steunenberg and John I. Wells, to be false, fraudulent and

untrue and the said statements and each of them were made for the purpose of procuring title from the United States to the lands described in the several sworn statements of the persons hereinbefore named, and which lands are hereafter described, pursuant to the unlawful, false, fraudulent and corrupt conspiracy, combination and agreement, hereinbefore referred to.

That in truth and in fact, divers of the said several applicants had been supplied and furnished the money with which to pay for said lands and the fees and expenses incident to obtaining title thereto, by the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, Frank Steunenberg and John I. Wells, or one or more of them, pursuant to the unlawful, fraudulent and corrupt agreement hereinbefore referred to; and the title to said lands was so obtained by each and all of the several persons hereinbefore named as applicants, for the purpose and with the understanding that the same should be conveyed at the request of the said defendants and Frank Steunenberg and John I. Wells, as soon as title thereto should be obtained from the United States.

SIXTH.

And complainant further avers and charges that the said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S.

Rand and Frank Steunenberg, and John I. Wells, by their said unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill of complaint, mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of the complainant to be issued to the various persons hereinbefore in this bill of complaint mentioned and hereinafter to be mentioned in connection with the several descriptions of said lands to be mentioned and set out. And your complainant further avers and charges that the said pretended patents to the lands hereinafter to be described, were not procured, as the defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand and said Frank Steunenberg and John I. Wells well knew at the time of procuring the same, in compliance with the laws of the United States. And your complainant further avers and charges that in the case of each and every of such tracts of land hereinafter in this bill of complaint described, the acts and conduct of the said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, and Frank Steunenberg and John I. Wells, and each of them, and of each and every of their employees and confederates, were illegal and fraudulent and that the patents procured from this complainant by and on behalf of said defendants, were and are, in each

and every instance, fraudulent and void, as against this complainant, and contrary to equity and good conscience, and being so, ought, by this Court, to be set aside and held for naught, not only in the hands of said defendants, but in the hands of any other person or persons whomsoever, if not still in the hands of the defendants.

EIGHTH.

And complainant avers and charges that the patents so unlawfully and fraudulently procured from complainant by and on behalf of the said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, and said Frank Steunenberg and John I. Wells, for the several tracts of land hereinafter in this bill of complaint mentioned and described, were issued by this complainant in each and every instance, within six years of the filing of this bill of complaint.

NINTH.

Complainant further avers and charges that pursuant to such unlawful and corrupt combination, conspiracy and agreement, and to effect the object and purpose thereof, the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, Frank Steunenberg and John I. Wells, did induce the said several persons hereinbefore and hereinafter named in connection with the description of the said several tracts of land, to con-

vey the same, in some instances to the defendant Albert E. Palmer, otherwise A. E. Palmer, in some instances to the defendant Horace S. Rand, in some instances to the defendant Barber Lumber Company, in other instances to one George S. Long, in other instances to other person or persons unknown to complainant; but complainant avers that in each and every instance such conveyances were executed for the benefit of said defendants, Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand and Frank Steunenberg and John I. Wells, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore set out and referred to.

And complainant here now, sets forth and describes the lands so as aforesaid, fraudulently procured to be patented by complainant by and on behalf of the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, Frank Steunenberg and John I. Wells, together with the name in each instance of the person through and by whom patents to said lands were so fraudulently obtained from complainant, as hereinbefore set out.

NELLIE J. THOMPSON: SE. $\frac{1}{4}$, SW. $\frac{1}{4}$, Lot 4, Sec. 30, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Lot 1, Sec. 31, T. 7 N., R. 5 E., B. M.

JOHN G. McDONALD: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, NW. $\frac{1}{4}$, NE. $\frac{1}{4}$, SW. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 5 E., B. M.

DEAN WEST: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 27, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 5 E., B. M.

LOUISA B. WEST: NW. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

DANIEL B. WOODMORE: SE. $\frac{1}{4}$, Sec. 35, T. 7 N., R. 5 E., B. M.

CHARLES NELSON: NE. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

WILLIAM PEARSON: NE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 5 E., B. M.

MARGARET PEARSON: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 27, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 5 E., B. M.

LELIA LEE: SE. $\frac{1}{4}$, Sec. 1, T. 7 N., R. 5 E., B. M.

ARTHUR E. BROOKHART: SW. $\frac{1}{4}$, Sec. 35, T. 7 N., R. 5 E., B. M.

GUSTAV A. LINK: SW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 5 E., B. M.

MARY LINK: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 22, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

GEORGE M. CUTLER: NW. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 5 E., B. M.

THADDEUS M. GLASS: NE. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 5 E., B. M.

HARRY L. CLYNE: SE. $\frac{1}{4}$, Sec. 6, T. 7 N., R. 5 E., B. M.

LOUIS NIBLER: SE. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 5 E., B. M.

JOHN U. CASSELL: SW. $\frac{1}{4}$, Sec. 25, T. 8 N., R. 5 E., B. M.

OLIVER JOHNSON: SW. $\frac{1}{4}$, Sec. 33, T. 7 N., R. 5 E., B. M.

EDWARD BRISBIN: Lot 3, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 1, T. 7 N., R. 5 E., B. M.

WILLIAM W. ABRAMS: Lots 3, 4, Sec. 5, T. 7 N., R. 5 E., S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 32, T. 8 N., R. 5 E., B. M.

SAMUEL C. BOWEN: SW. $\frac{1}{4}$, Sec. 17, T. 7 N., R. 5 E., B. M.

HOMER C. GRANGER: NE. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 5 E., B. M.

LEWIS K. BURNS: NW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 5 E., B. M.

JOHN M. BYRON: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 1, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 5 E., B. M.

WILLIAM F. SNOW: W. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 5 E., B. M.

LEWIS L. FOLSOM: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 18, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 5 E., B. M.

JOSEPH M. HOLLISTER: SE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 5 E., B. M.

LEONORA HOLLISTER: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 18, T. 7 N., R. 5 E., B. M.

CHARLES A. WALKER: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 8, T. 7 N., R. 5 E., B. M.

HENRY F. BENEDIX: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 5, T. 7 N., R. 5 E., B. M.

URIAH F. McBURNEY: SE. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 5 E., B. M.

WILLIAM J. MARCUM: Lot 4, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 4, T. 7 N., R. 5 E., S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 33, T. 8 N., R. 5 E., B. M.

SAMUEL MARCUM: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 7, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 8, T. 6 N., R. 6 E., B. M.

WALTER L. HARRISON: Lot 3, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 30, T. 7 N., R. 5 E., B. M.

JAMES O. BAKER: SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 5 E., B. M.

HENRY HUMPHREY: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 28, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 5 E., B. M.

CHARLES W. BALENTINE: NE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 5 E., B. M.

M. LAETA EAGLESON: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 8, T. 7 N., R. 5 E., B. M.

NORMAN H. YOUNG: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 17, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 18, T. 7 N., R. 5 E., B. M.

FRANK B. NICKERSON: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Lot 1, Sec. 30, T. 7 N., R. 5 E., B. M.

LETTIE L. STEPHENSON: SE. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 5 E., B. M.

MARTIN S. STEPHENSON: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 33, W. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 5 E., B. M.

GERTRUDE A. LEWIN: NE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 5 E., B. M.

WILLIAM H. LEWIN: NE. $\frac{1}{4}$, Sec. 32, T. 6 N., R. 6 E., B. M.

ALTHA GILLUM: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$,

Sec. 25, T. 8 N., R. 5 E., B. M.

MACK GILLUM: NE. $\frac{1}{4}$, Sec. 26, T. 8 N., R. 5 E., B. M.

JOHN R. GARY: SE. $\frac{1}{4}$, Sec. 25, T. 8 N., R. 5 E., B. M.

FRANK LANE: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 35, T. 8 N., R. 5 E., B. M.

URIAH FLINT: NE. $\frac{1}{4}$, Sec. 35, T. 8 N., R. 5 E., B. M.

DAVID G. THOMPSON: SE. $\frac{1}{4}$, Sec. 26, T. 8 N., R. 5 E., B. M.

SAMUEL GREIG: Lot 4, Sec. 1, Lots 1, 2, 3, Sec. 2, T. 7 N., R. 5 E., B. M.

SARAH GREIG: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 5 E., B. M.

GUSTAV H. ROTHINE: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 5, T. 7 N., R. 5 E., B. M.

WILLIAM F. ROBERTS: NW. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 5 E., B. M.

PATRICK H. DOWNS: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 17, T. 7 N., R. 5 E., B. M.

JOHN C. MONROE: NE. $\frac{1}{4}$, Sec. 35, T. 7 N., R. 5 E., B. M.

MARY A. MONROE: SE. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 5 E., B. M.

JAMES H. HAMILTON: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 5 E., B. M.

MICHAEL KOPPAS: SE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 5 E., B. M.

JENNIE E. THOMPSON: SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 4 E., B. M.

ALBERT B. EWING: Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 6 E., B. M.

CORA B. EWING: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 5 E., B. M.

BERTHA MARTIN: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 1, T. 7 N., R. 5 E., B. M.

EDWARD J. PHELPS: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 7 N., R. 5 E., B. M.

JOHN BATES: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 20, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 5 E., B. M.

WILLIAM H. MARTIN: SE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 6 E., B. M.

HENRIETTA B. MARTIN: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 1, 2, Sec. 7, T. 7 N., R. 8 E., B. M.

JENS OLESON: SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 7 E., B. M.

EVELYN O'FARRELL: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 26, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 35, T. 7 N., R. 5 E., B. M.

OLIVER JOHNSON: SW. $\frac{1}{4}$, Sec. 33, T. 7 N., R. 4 E., B. M.

CHARLEY PATTERSON: NW. $\frac{1}{4}$, Sec. 33, T. 6 N., R. 6 E., B. M.

GEORGE S. WARREN: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 32, T. 6 N., R. 6 E., B. M.

GEORGE H. ENSWORTH: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 19, T. 6 N., R. — E., B. M.

WILLIS C. LANE: NW. $\frac{1}{4}$, Sec. 28, T. 6 N., R. 6 E., B. M.

ERY A. WILMOT: NW. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 6 E., B. M.

EDWARD E. BUTLER: SE. $\frac{1}{4}$, Sec. 32, T. 6 N., R. 6 E., B. M.

WILBERT F. WILMOT: Lots 3, 4, 5, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 6, T. 7 N., R. 6 E., B. M.

JOHN D. FRENCH: SE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 6 E., B. M.

ADELLA C. BROOKHART: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 6 E., B. M.

HOMER G. ALLEN: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 18, T. 6 N., R. 6 E., B. M.

WALTER S. WALKER: SE. $\frac{1}{4}$, Sec. 31, T. 6 N., R. 6 E., B. M.

JOSEPH FRENCH: SW. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 6 E., B. M.

LOUIS M. PRITCHARD: NW. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 6 E., B. M.

WILLIAM JUDGE: NE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 6 E., B. M.

SMITH BARKER: SW. $\frac{1}{4}$, Sec. 33, T. 6 N., R. 6 E., B. M.

SEDWIG HOOVER: SW. $\frac{1}{4}$, Sec. 28, T. 6 N., R. 6 E., B. M.

HENRY RICS: E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 6, 7, Sec. 6, T. 7 N., R. 6 E., B. M.

JOHN W. ROSE: Lots 2, 1, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 1, T. 6 N., R. 7 E., B. M.

FREDERICK THURMAN: NE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 6 E., B. M.

VICTORIA L. EOFF: W. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 8, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 6 E., B. M.

HARRY S. WORTHMAN: W. $\frac{1}{2}$ SW. $\frac{1}{4}$, NE.

$\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 6 E., B. M.

CHARLES W. BALENTINE: NE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 5 E., B. M.

BURT RESSER: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 3, 4, Sec. 1, T. 6 N., R. 7 E., B. M.

EDWARD A. LOCKHART: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 1, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 12, T. 6 N., R. 7 E., B. M.

FRANK R. McDONALD: Lots 2, 3, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 6, T. 6 N., R. 8 E., B. M.

LUELLE JAYCOX: Lots 4, 5, 6, 7, Sec. 6, T. 6 N., R. 8 E., B. M.

ORLIN R. JAYCOX: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 17, T. 6 N., R. 8 E., B. M.

BENJAMIN R. ALLEN: NE. $\frac{1}{4}$, Sec. 30, T. 6 N., R. 8 E., B. M.

SAMUEL E. VANCE: NW. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 8 E., B. M.

JOHN E. HOBBS: SW. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 8 E., B. M.

JOHN J. POWLEY: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 32, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 33, T. 6 N., R. 8 E., B. M.

LOUISE E. BUTLER: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 4, T. 7 N., R. 8 E., B. M.

ELVIE M. BUTLER: Lot 4, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 8 E., B. M.

ALICE FORDNEY: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 3, T. 7 N., R. 8 E., B. M.

HENRY BAYHOUSE: SW. $\frac{1}{4}$, Sec. 3, T. 7 N., R. 8 E., B. M.

ALFRED BAYHOUSE: SE. $\frac{1}{4}$, Sec. 3, T. 7 N.,

R. 8 E., B. M.

FRANK BAYHOUSE: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 19, T. 7 N., R. 8 E., B. M.

GEORGE BAYHOUSE: NE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 8 E., B. M.

MOSES H. KEMPNER: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 19, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 20, T. 7 N., R. 8 E., B. M.

ANNIE E. KEMPNER: NE. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 8 E., B. M.

MERRITT L. TWOGOOD: NW. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 8 E., B. M.

IDA TWOGOOD: SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 4, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 9, T. 7 N., R. 8 E., B. M.

DELILAH BAYHOUSE: NW. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 8 E., B. M.

ANDREW HANSON: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 22, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, T. 7 N., R. 8 E., B. M.

EMERSON SENSENIG: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 26, T. 7 N., R. 8 E., B. M.

LUCRETIA C. SENSENIG: SW. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 8 E., B. M.

JACOB V. NUSBAUM: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 8 E., B. M.

PEARL I. NUSBAUM: SE. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 8 E., B. M.

BENJAMIN C. EAGLESON: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E., B. M.

CHARLES H. EAGLESON: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E., B. M.

HARRY K. EAGLESON: S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E., B. M.

HELEN E. EAGLESON: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 8 E., B. M.

GEORGE T. ELLIS: SE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 8 E., B. M.

MARY THOMPSON & T. S. THOMPSON: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 1, 2, Sec. 19, T. 7 N., R. 8 E., B. M.

GENERAL L. WILLHITE: SW. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 8 E., B. M.

ELIZABETH WILLHITE: NE. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 8 E., B. M.

EMMA BILDERBACK: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 27, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28, T. 7 N., R. 8 E., B. M.

WILLIAM F. NOBLE: NE. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 8 E., B. M.

CAROLINE ALEXANDER: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 34, T. 7 N., R. 8 E., B. M.

CHARLES R. BECKLEY: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 26, T. 7 N., R. 8 E., B. M.

MANTIE BECKLEY: SW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 8 E., B. M.

ELIZABETH SCHMELZEL: SE. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 8 E., B. M.

JEANETTE B. COOPER: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 30, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 29, T. 7 N., R. 8 E., B. M.

JAMES F. BELK: SW. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 8 E., B. M.

ARIETTA H. STAHL: E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 3, 4, Sec. 7, T. 7 N., R. 8 E., B. M.

BENJAMIN E. STAHL: SW. $\frac{1}{4}$, Sec. 8, T. 7 N., R. 8 E., B. M.

LENA D. WILSON: SE. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 8 E., B. M.

WALTER L. WILSON: Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 8 E., B. M.

HELEN SULLIVAN: NW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 8 E., B. M.

JOSEPH SULLIVAN: NE. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 8 E., B. M.

WILLIAM H. MARTIN: SE. $\frac{1}{4}$, Sec. 7, T. 7 N., R. 8 E., B. M.

HENRIETTA B. MARTIN: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 1, 2, Sec. 7, T. 7 N., R. 8 E., B. M.

ELMA E. GARDNER: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 7 E., B. M.

GEORGE W. BUTLER: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 7 N., R. 8 E., B. M.

EDGAR E. BUSH: S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 8 E., B. M.

SONORA A. JOPLIN: SW. $\frac{1}{4}$, Sec. 33, T. 7 N., R. 8 E., B. M.

ANDREW F. JOPLIN: Lots 1, 2, 3, 4, Sec. 5, T. 6 N., R. 8 E., B. M.

WALTER JOPLIN: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 20, T. 7 N., R. 8 E., B. M.

FRANK P. WEASEL: SE. $\frac{1}{4}$, Sec. 31, T. 7 N., R. 8 E., B. M.

GEORGE M. YORK: Lots 1, 2, 3, 4, Sec. 30, T. 7 N., R. 8 E., B. M.

EARL A. HARRINGTON: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 8 E., B. M.

SAMUEL S. HORNER: W. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 26, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 27, T. 7 N., R. 7 E., B. M.

HORTENSE D. HORNER: W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 22, T. 7 N., R. 7 E., B. M.

SAMUEL M. BLANDFORD: SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 11, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 7 E., B. M.

EMMA LOU BLANDFORD: S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 14, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23, T. 7 N., R. 7 E., B. M.

WILLARD C. AUSTIN: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 22, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 21, T. 7 N., R. 7 E., B. M.

ADA V. AUSTIN: N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, T. 7 N., R. 7 E., B. M.

CLIFTON C. BLIVEN: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 7 E., B. M.

SUSIE A. YOUNGKIN: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 7 E., B. M.

JOHN A. YOUNGKIN: NE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 7 E., B. M.

WILLIAM E. CAVANAUGH: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 15, T. 7 N., R. 8 E., B. M.

WILLIAM H. GIBBARD: E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 7 E., B. M.

ELOF ANDERSON: SE. $\frac{1}{4}$, Sec. 12, T. 7 N., R. 7 E., B. M.

EMMA M. ANDERSON: Lots 1, 2, 3, 4, Sec. 1, T. 7 N., R. 7 E., B. M.

BURT T. PARKER: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 9, T. 7 N., R. 8 E., B. M.

JACKSON OWNBEY: NW. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 7 E., B. M.

HARRISON F. OWNBEY: SW. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 7 E., B. M.

JAMES OWNBEY: NE. $\frac{1}{4}$, Sec. 13, T. 7 N., R. 7 E., B. M.

MARY E. OWNBEY: Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 3, T. 7 N., R. 7 E., B. M.

THOMAS F. KELLY: SW. $\frac{1}{4}$, Sec. 10, T. 7 N., R. 8 E., B. M.

JOHN M. NEIL: N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 25, T. 7 N., R. 8 E., B. M.

MAUD PITMAN NEIL: Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 4, T. 7 N., R. 8 E., B. M.

ADDIE G. GIBBARD: Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 2, T. 7 N., R. 7 E., B. M.

EDWARD H. STARN: NW. $\frac{1}{4}$, Sec. 10, T. 7 N., R. 8 E., B. M.

MARY STARN: SE. $\frac{1}{4}$, Sec. 10, T. 7 N., R. 8 E., B. M.

AARON OWNBEY: E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 9, T. 7 N., R. 8 E., B. M.

EDWARD J. DOCKERY: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 24, T. 7 N., R. 8 E., B. M.

EVA HUNT DOCKERY: Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 4, T. 7 N., R. 8 E., B. M.

IRVING W. HART: NW. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 8 E., B. M.

FANNIE R. HART: SW. $\frac{1}{4}$, Sec. 11, T. 7 N., R. 8 E., B. M.

CHARLES S. KINGSLEY: SW. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 8 E., B. M.

CARO F. B. KINGSLEY: NW. $\frac{1}{4}$, Sec. 14, T. 7 N., R. 8 E., B. M.

ANDREW CAMPBELL: NW. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

JOSEPH PENROD: NE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

WILBERT R. REEVES: NW. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

CHARLES B. FARADAY: NW. $\frac{1}{4}$, Sec. 28, T. 6 N., R. 4 E., B. M.

WILLIS A. ROSS, SE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

JOSIE M. ROSS: SW. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

LORIN T. KINERT: SW. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

CLEORA M. SNOW: NE. $\frac{1}{4}$, Sec. 15, T. 6 N., R. 4 E., B. M.

HARRY B. NOBLE: SW. $\frac{1}{4}$, Sec. 28, T. 6 N., R. 4 E., B. M.

GEORGE E. EAGLESON: E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 27, T. 6 N., R. 4 E., B. M.

MARY J. EAGLESON: Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 1, T. 6 N., R. 4 E., B. M.

ANNA FISHER: E. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 12, T. 6 N., R. 4 E., B. M.

ALEXANDER T. ELLIS: N. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 22, T. 6 N., R. 4 E., B. M.

JOSEPH EHRLMANNTRAUT, Jr.; NW. $\frac{1}{4}$ Sec. 15, T. 6 N., R. 4 E., B. M.

MARGARET M. EHRLMANNTRAUT: SE. $\frac{1}{4}$, Sec. 15, T. 6 N., R. 4 E., B. M.

CHARLES W. CLAWSON: SW. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

GEORGE R. AVERY: SE. $\frac{1}{4}$, Sec. 29, T. 6 N., R. 4 E., B. M.

FRANK R. MARTIN: NE. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

WHEELER H. MARTIN: SE. $\frac{1}{4}$, Sec. 21, T. 6 N., R. 4 E., B. M.

THOMAS L. MARTIN: SW. $\frac{1}{4}$, Sec. 23, T. 6 N., R. 4 E., B. M.

JOHN K. WOODBURN: SW. $\frac{1}{4}$, Sec. 15, T. 6 N., R. 4 E., B. M.

WILLIAM B. DAVIDSON: NE. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

RICE J. HARBAUGH: S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 22, T. 6 N., R. 4 E., B. M.

MARGARET SCULLY: NW. $\frac{1}{4}$, Sec. 20, T. 6 N., R. 4 E., B. M.

JOHN J. BLAKE: NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 17, T. 5 N., R. 4 E., B. M.

DENNIS THORNTON: SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 12, W. $\frac{1}{2}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 13, T. 5 N., R. 3 E., B. M.

ALBERT S. HOLCOMB: N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 21, T. 5 N., R. 4 E., and the SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Lots 3, 4, 5, 6, Sec. 22, T. 5 N., R. 4 E., B. M.

BEULAH B. LAKE: NE. $\frac{1}{4}$, Sec. 8, T. 6 N., R. 4 E., B. M.

ABBIE M. BRIGGS: SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 5, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec.

5, T. 6 N., R. 4 E., B. M.

NATHAN M. GARDNER: SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 33, T. 5 N., R. 4 E., B. M.

CLINTON M. GARDNER: SE. $\frac{1}{4}$, Sec. 6, T. 4 N., R. 4 E., B. M.

ALFARATA L. GARDNER: SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Lot 4, 5, Sec. 6, T. 4 N., R. 4 E., B. M.

Forasmuch therefore as the complainant has been so as above cheated and defrauded of its valuable lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and relievable; and to the end that the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, may full, true, direct and certain answers make according to the best of their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, Horace S. Rand, Frank Steunenber and John I. Wells and the several persons hereinbefore named in connection with the description of said lands, may be held, adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the

several persons hereinbefore named, and that by reason of such fraud, the patents issued to them, or either of them, or to others in their behalf, be declared void, and as such, be held for naught, and set aside, and the said lands restored to the public domain of the complainant; and the said defendants and each of them be held to pay into the treasury of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, and that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this Honorable Court.

May it please your Honors to grant unto the complainant, a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Barber Lumber Company, a corporation, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, and Horace S. Rand, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises and further, to stand to and abide by such order and decree therein as shall be

agreeable to equity and good conscience, and your complainant will ever pray.

CHARLES J. BONAPARTE,

Attorney General of the United States.

C. H. LINGENFELTER,

United States Attorney, District of Idaho.

PEYTON GORDON,

Special Assistant to the Attorney General.

Solicitors for Complainant.

[Endorsed]: Filed January 26th, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the
District of Idaho, Central Division.*

IN EQUITY—No. 47.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

**Order Extending Time to Take Testimony [Relative
to Pleadings, etc.]**

Upon the application of the Complainant in the above-entitled cause, the defendants consenting thereto, it is, this 10th day of February, 1909, ordered that the time heretofore allowed for the taking of testimony in the said cause by and on behalf of said complainant, be and the same hereby is, extended to and including the 15th day of March, 1909; that the defendants in the said cause be allowed for the taking of their testimony thirty days from and after the

conclusion of the testimony taken by said complainant, and that the said complainant be allowed, for the taking of testimony in rebuttal, fifteen days after the conclusion of the testimony taken by the said defendants.

It is further ordered that the amended bill heretofore filed by the said complainant be, and it hereby is, accepted and held to be filed in compliance with the previous order of the Court authorizing amendment of the original bill, and that the answer filed by the said defendants to the original bill may at the election of defendants stand as an answer to the said bill as amended, such election to be exercised within ten days.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed Feb. 13, 1909. A. L. Richardson, Clerk.

At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, on Saturday, the 27th day of February, 1909. Present: Hon. FRANK S. DIETRICH, Judge.

No. 47.

THE UNITED STATES

vs.

BARBER LUMBER COMPANY et al.

Order Fixing Amount of Compensation of Special Examiner.

It is hereby ordered that John T. Morgan, Special Examiner in this cause, be paid the sum of \$12.50 per

day for his actual attendance upon the hearing and that each party pay for the days upon which its testimony was being taken.

In the Circuit Court of the United States for the District of Idaho.

No. 47.

THE UNITED STATES,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

Order Appointing A. D. Williams Special Examiner.

Upon the application of the complainant in the above-entitled cause, the defendants consenting thereto, it is, this the 6th day of March, 1909, ordered that A. D. Williams, of Seattle, Washington, be and he is hereby, appointed and constituted a special examiner of this court for the purpose of taking testimony in the said cause, and he is authorized and empowered as such special examiner to take the testimony therein of such witnesses as may be offered by either party, at Seattle, Washington.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed March 6th, 1909. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

No. 47.

THE UNITED STATES,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

Order Appointing A. M. Wing Special Examiner.

Upon the application of the complainant in the above-entitled cause, the defendants consenting thereto, it is, this the 6th day of March, 1909, ordered that A. M. Wing, of Portland, Oregon, be and he is hereby, appointed and constituted a special examiner of this court for the purpose of taking testimony in the said cause, and he is authorized and empowered as such special examiner to take the testimony therein of such witnesses as may be offered by either party, at Portland, Oregon.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed March 6th, 1909. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

No. 47.

THE UNITED STATES,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

Order Appointing Clement Bennet Special Examiner.

Upon the application of the complainant in the above-entitled cause, the defendants consenting thereto, it is, this the 6th day of March, 1909, ordered that Clement Bennet, of San Francisco, California, be and he is hereby, appointed and constituted a special examiner of this court for the purpose of taking testimony in the said cause, and he is authorized and empowered as such special examiner to take the testimony therein of such witnesses as may be offered by either party, at San Francisco, California.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed March 6th, 1909. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

No. 47.

THE UNITED STATES,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

Order Appointing John P. Doyle, Special Examiner.

Upon the application of the complainant in the above-entitled cause, the defendants consenting thereto, it is, this the 6th day of March, 1909, ordered that John P. Doyle, of Reno, Nevada, be and he is

hereby, appointed and constituted a special examiner of this court for the purpose of taking testimony in the said cause, and he is authorized and empowered as such special examiner to take the testimony therein of such witnesses as may be offered by either party, at Reno, Nevada.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed March 6th, 1909. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

No. 47.

THE UNITED STATES,
Complainant,
vs.
THE BARBER LUMBER COMPANY et al.,
Defendants.

Order Appointing John W. Christy, Special Examiner.

Upon the application of the complainant in the above-entitled cause, the defendants consenting thereto, it is, this the 6th day of March, 1909, ordered that John W. Christy, of Salt Lake, Utah, be and he is hereby, appointed and constituted a special examiner of this court for the purpose of taking testimony in the said cause, and he is authorized and empowered as such special examiner to take the testimony therein of such witnesses as may be offered by either party, at Salt Lake, Utah.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed March 6th, 1909. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

No. 47.

THE UNITED STATES,

Complainant,

vs.

THE BARBER LUMBER COMPANY et al.,
Defendants.

Order Appointing Leo Longley Special Examiner.

Upon the application of the complainant in the above-entitled cause, the defendants consenting thereto, it is, this the 6th day of March, 1909, ordered that Leo Longley, of Los Angeles, California, be and he is hereby, appointed and constituted a special examiner of this court for the purpose of taking testimony in the said cause, and he is authorized and empowered as such special examiner to take the testimony therein of such witnesses as may be offered by either party, at Los Angeles, California.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed March 6th, 1909. A. L. Richardson, Clerk.

At a stated term of the Circuit Court of the United States for the District of Idaho, held at Boise, Idaho, on Tuesday the 9th day of March, 1909.
Present: Hon. FRANK S. DIETRICH, Judge.

IN EQUITY.—No. 47.

THE UNITED STATES,

Complainant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),

Defendants.

Order Extending Time to Take Testimony, etc.

It is this day ordered that the time allowed to the complainant in this cause for the taking of testimony be, and the same is extended to, and to include the 17th day of April, 1909, and that the defendants in this cause are allowed for the taking of testimony in their behalf the period of thirty days from the 25th day of April and that the complainant is allowed for the taking of testimony in rebuttal the period of twenty days from and after such time as the defendants shall announce upon the second the conclusion of their testimony.

It appearing to the Court that it is necessary to take the testimony of divers witnesses resident without the District of Idaho, at divers places without the said District and that to that end divers books and papers now upon the files in the Clerk's office of this court may be needed for use in the examination of such witnesses, it is this the day aforesaid

further ordered that the solicitors in this cause have leave to withdraw from the Clerk's office such books and papers filed as exhibits as may be required in the examination of the said witnesses.

*In the Circuit Court of the United States, District
of Idaho.*

EQUITY—No. 47.

UNITED STATES,

vs.

THE BARBER LUMBER COMPANY et al.

Order Appointing Charles H. Taylor Special Examiner.

By consent of the parties to the above-entitled cause, it is this 11th day of March, 1909, ordered that Charles H. Taylor of Saint Paul, Minnesota, be and he is hereby appointed a special examiner of this court for the purpose of taking testimony in the said cause, and he is authorized and empowered to take the testimony of such witnesses as may be offered by either party at Saint Paul or Minneapolis, in the State of Minnesota.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed March 11, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Central
Division, of the District of Idaho.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE BARBER LUMBER COMPANY et al.,

Defendants.

**Order [That Answer of Barber Lumber Company
Stand as Answer to Amended Bill of Com-
plaint].**

Whereas an order of this court having heretofore been made allowing and permitting the defendants to elect whether or not their said answer heretofore filed in this action should stand and be considered as an answer to the amended bill of complaint filed herein, said election to be exercised within ten days from and after the date of said order, and said time having elapsed without such election being made by said defendants and said defendants through their counsel, Alfred A. Fraser, having now elected that their said answer heretofore filed in this case be considered and stand as the answer to the amended bill of complaint filed herein, it is hereby ordered by me, the Judge of said court, that the answer of the defendants heretofore filed as the answer to the original bill of complaint filed in this cause be considered, taken and deemed to all intents and purposes to be the answer to the amended bill of complaint herein.

FRANK S. DIETRICH,

District Judge.

Dated this 27th day of March, 1909.

[Endorsed]: Filed March 27th, 1909. A. L. Richardson, Clerk.

In the United States Circuit Court, District of Idaho.

No. 47—IN EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY, JAMES T.
BARBER et al.,

Defendants.

Stipulation [That Answer of Barber Lumber Company Stand as Answer to Amended Bill of Complaint].

It is hereby stipulated by and between counsel for the parties to the above-entitled action that the answer of the Barber Lumber Company heretofore made and filed to the original bill shall stand as the answer of said defendant to complainant's amended bill, and that an order to that effect may be made herein upon filing this stipulation and without further notice.

Dated March 26th, 1909.

PEYTON GORDON,

C. A. KEIGWIN,

Solicitors for Complainant.

C. T. BUNDY,

Solicitor for Defendant, Barber Lumber
Company.

[Endorsed]: Filed March 29, 1909. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the
District of Idaho.*

UNITED STATES OF AMERICA,
Complainant,

vs

BARBER LUMBER COMPANY (a Corporation),
JAMES T. BARBER, SUMNER G. MOON,
WILLIAM SWEET, JOHN KINKAID,
LOUIS M. PRITCHARD, PATRICK H.
DOWNS, ALBERT E. PALMER, and HOR-
ACE S. RAND,

Defendants.

Testimony.

Appearances:

PEYTON GORDON, Esq., and
C. A. KEIGWIN, Esq.,

For Complainant,

C. T. BUNDY, Esq., and
ALFRED A. FRASER, Esq.,

For Defendants.

Testimony taken before Hon. JOHN T. MOR-
GAN, Special Examiner.

Pursuant to notice, at 10:00 A. M., February 1st,
1909, counsel for both parties appeared, and on
motion of counsel for the defense, it appearing that
senior counsel for the defense is snowbound at
Omaha, and unable to appear, by agreement an ad-
journment was taken to Wednesday, February 3d,
at 10:00 A. M.

February 3d, 1909, court met, pursuant to adjourn-
ment, the examiner and counsel for the respective

(Testimony of William W. Abrams.)

parties being present in court, the following proceedings were had, to wit:

**[Testimony of William W. Abrams, on Behalf of
the Government.]**

WILLIAM W. ABRAMS, being first duly sworn by the examiner as a witness on behalf of the Government, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You may state your name, please.

A. William W. Abrams.

Q. Where do you reside, Mr. Abrams?

A. 313 Thatcher Street, Boise, Idaho.

Q. What is your occupation, Mr. Abrams?

A. Carpenter by trade.

Q. How long have you lived in Boise?

A. Well, I have lived here—I think I came here in the fall of 1897—I think it was then—I wouldn't be positive.

Q. Did you make a timber and stone entry in October, 1901?

A. Yes, sir, I did.

Q. I show you timber and stone sworn statement and ask you if that is your signature, (showing witness paper).

A. That is my signature, yes, sir.

Q. Do you remember who prepared that paper for you?

A. No, sir, I do not.

Q. Do you know in whose office it was prepared?

A. No, sir, I disremember where that paper was prepared—I wouldn't say where it was prepared—

(Testimony of William W. Abrams.)

I have forgotten.

Q. Who first spoke with you about taking up this land, making this entry?

A. The first that I was spoken to about that was—Mr. Ballentine come to me and spoke to me about it.

Q. What Mr. Ballentine?

A. Charles Ballentine, my neighbor.

Q. What did he say to you with reference to it?

Objected to as immaterial, irrelevant and hearsay evidence.

Q. What did Mr. Ballentine say?

A. He wanted to know if I would like to take up some land and I told him I did.

Q. Did he explain to you how it should be taken up?

A. No, I don't remember as he did. I forget just what the conversation was between he and I. That has been some years ago.

Q. What did he tell you you should do to take it up?

A. We would have to go up and look the land over, make application for it.

Q. Did he direct you to see some one else?

Objected to by the defense as immaterial, irrelevant, and hearsay evidence, and not binding upon these defendants or any of them.

A. Why, he told me there was some other parties going up at a certain time.

Q. Now, state what you did then. Did he tell you where this land was?

(Testimony of William W. Abrams.)

A. Yes, he said it was up in the Placerville country.

Q. Did he give you any specific description of this property? A. No.

Q. Well, then, what did you do?

A. Why, I and the men—there was three of us—went up there, a locator, another man with me, to locate this land.

Q. Who were the three you went with?

A. Mr. Folsom and myself went to locate, and a man by the name of Snow went in company with us.

Q. Were you located? A. Yes, sir.

Q. Who located you? A. Mr. Downs.

Q. What Mr. Downs?

A. He goes here by the name of Patrick Downs—he is known here as Pat Downs.

Q. Who told you to see Mr. Downs?

A. Why, we were taken to his place?

Q. And did you have any agreement or understanding with Mr. Downs as to this property?

A. No, sir.

Q. Did he say he would charge you for locating you?

A. We paid to a man—I suppose it was in the firm of locators—I paid him \$25.

Q. Who was he?

A. A man by the name of Nelson.

Q. Do you know his first name?

A. I do not know his first name.

Q. What was the occupation of Nelson?

A. I do not know.

(Testimony of William W. Abrams.)

Q. Do you know what work he was engaged in at that time?

A. I do not—if he was engaged in any labor anywhere I don't know anything of it.

Q. Mr. Nelson located you?

A. I paid him the location fees.

Q. Who introduced you to Nelson?

A. I think he came to me.

Q. Before you went there or after you went there?

A. After, I think—I won't be positive—that is so long ago I can't remember it probably as it really was.

Q. After this man located you did you return to Boise?

A. I did.

Q. Did he give you a description of the land?

A. I think so.

Q. Now, do you remember—

A. (Interrupting.) I think that—I won't be positive, but I ain't certain—I wouldn't say, but I believe they made out the descriptions of the land that were used in the land office for filing.

Q. Up there?

A. Yes, I wouldn't say where they was made out, but I think they did it, the locators.

Q. What was the name of the town where they were made out, to the best of your recollection?

A. We didn't stop in any town at all. There was a house that these locators I suppose had rented—I don't know—they might have rented it,—it might have belonged to them—they might have taken

(Testimony of William W. Abrams.)

possession of it as a claim jumper. We was taken to that house and this man Snow that went with us—we got there Sunday evening, I recollect that, and it was raining, and we stayed there that night and the next morning we went out and looked at the land.

Q. Did he show you more than one piece of land?

A. We see several pieces of land.

Q. How many pieces did he take you over?

A. I think I was on some three pieces—I ain't certain now.

Q. Did you pick out a piece of land yourself or did he point out a piece and say you should take it?

A. He showed a piece that was vacant—he had a map, I think a township map probably—I ain't certain now.

Q. Do you remember talking with anyone about this land or about filing between the time that you returned to Boise and the date you filed?

A. Why, I and Mr. Folsom and Mr. Ballentine talked about it several times, about the land.

Q. Did they state to you what you could get out of this land before you went up there?

Objected to by the defense as immaterial, irrelevant and hearsay evidence, and not binding upon these defendants, or any of them.

A. No, sir.

Q. Do you remember whether you went to the land office alone or some one went with you?

A. There was more than myself along—I disremember now how many there **was** or just who it was.

(Testimony of William W. Abrams.)

I think I and Mr. Folsom both filed at the same time.

Q. Did you have any talk with any of these people between the time you filed and the time you made your final proof?

Objected to by the defense as immaterial, irrelevant and hearsay evidence, counsel remarking that none of these persons are charged with being codefendants or conspirators, and would not bind any of them.

A. No, sir.

Q. Did anyone notify you the time you were to make your final proof?

A. Well, we knowed when to make the final proof because we had to make an affidavit of the advertisement.

Q. And did you use your own money to prove up with, to make your final proof?

Objected to as immaterial and irrelevant.

A. If you give me a dollar is it your dollar or mine?

Q. Will you state where you got the money with which to prove up, with which you made your final proof?

Objected to by the defense as immaterial, irrelevant and incompetent, because he would have a right to get the money any place he pleased to make his final proof, and there has been no evidence so far introduced tending to establish any fraud on the part of this entryman at the time he made his application at the land office to enter this land.

(Testimony of William W. Abrams.)

Mr. KEIGWIN.—Counsel for the complainant desire to state that they expect to connect this testimony of the acts and transactions of the defendants by other testimony.

Mr. BUNDY.—Defendants object to the inquiry as to where the witness procured the money with which to make final proof for the reason that such evidence is incompetent, irrelevant, immaterial, and not tending to establish any fraud or unlawful act, or any violation of law in making application to purchase this land.

A. Yes, sir, I can tell you where I got it. John I. Wells let me have the money.

Q. Will you state the circumstances under which you received the money from Mr. Wells?

Mr. BUNDY.—Same objection as to last preceding question.

A. I went to Mr. Wells.

Mr. FRASER.—I guess, gentlemen, it will be understood that this objection will go to all such questions, where we object on the same grounds, without repeating the grounds.

Mr. GORDON.—Yes, sir.

A. I went to him and I told him I wanted some money, and he pulled it out of his pocket and give it to me.

Q. Had you had any talk with him about this before that?

A. No, sir, not one word, never seen him to talk with him—I never had no conversation with Mr. Wells before in my life.

(Testimony of William W. Abrams.)

Q. Where was this that he gave you this money, Mr. Abrams?

A. On Idaho Street, in his office.

Q. How long was that before you made your proof?

A. Now, I wouldn't say **positively** just how long it was. It might have been the same day and it might have been the next day.

Q. Was that money in cash or by check?

A. It was cash.

Q. How much was it? A. \$400.

Q. Did you give him a note for it?

A. No, sir, I did not.

Q. Was there any understanding when you were to return that money?

A. Nothing said about that at all.

Mr. BUNDY.—The defendants will interpose an objection to all evidence relating to payment for the lands purchased by this and other entryman for the reason that such evidence is wholly incompetent, irrelevant and immaterial, and does not tend to show or establish any fraud committed against the Government, and not responsive to any allegation in the pleading.

Q. Was anything said to you when that money was given you as to where you should say you got it when you went to the land office? A. No, sir.

Q. Then you went to the land office and made your final proof? A. Yes, sir.

Q. I will ask you if that is your signature—this is the examination, testimony (showing witness

(Testimony of William W. Abrams.)

paper)? A. That is my signature.

Mr. GORDON.—We offer in evidence the entry papers, the original sworn statement, and the testimony taken at the time of final proof, and the cross-examination thereto, the receivers' receipt, and final certificate from the land office.

Mr. FRASER.—We object to the introduction of this final proof as being immaterial, irrelevant and incompetent, no foundation having been laid for the introduction of the same at the present time, and for the further reason that it is an attempt upon the part of the plaintiff to impeach their own witness.

(Marked Plaintiff's Exhibit 1.)

Q. (By Mr. GORDON, Continuing.) Mr. Abrams, do you remember where you received that original sworn statement?

A. Where I received it?

Q. Yes.

Mr. BUNDY.—Mr. Gordon, you will have to give them different names than that. Do you mean the original application to purchase?

Mr. GORDON.—It is called the sworn statement, that is the original one.

Mr. FRASER.—I would suggest that you identify that as Exhibit 1 A, 1 B, 1 C, etc., so that you can call the witnesses' attention.

Mr. BUNDY.—If you are going to refer to them by date—

Mr. GORDON.—I refer now to original sworn statement dated October 30, 1901.

A. The only thing I can identify is my own sig-

(Testimony of William W. Abrams.)

nature.

Q. I am asking you do you remember where you got that paper?

A. I made no papers anywheres only in the land office.

Q. Did you make this paper in the land office yourself or did someone bring it to you there?

A. I think the man I paid for locating me made those papers out for me—I ain't certain.

Q. Do you remember who handed them to you in the land office?

A. No, I don't—I don't know who handed them to me. I couldn't say. A man that has got a remembrance for eight or nine years has got a pretty good one.

Q. Do you remember whether a man by the name of Pritchard or Downs brought those papers to you at the land office?

A. I couldn't say, as I told you several time before,—I don't know and couldn't say.

Q. I am just asking for your best recollection. When you paid the money into the land office to make final proof did they give you a receipt for that?

A. Yes, sir.

Q. Do you remember the amount you paid into the land office on that occasion?

A. Well, I paid something over \$400, I think. What it was I don't remember.

Q. Do you remember what you did with that receipt, Mr. Abrams?

A. Yes, sir, I do.

Q. Please state.

(Testimony of William W. Abrams.)

A. I took it home and put it away.

Q. Did you sell this property?

A. Yes, sir, I sold it.

Q. State the circumstances of selling it, please.

Mr. BUNDY.—We object to the question as meaningless, and as immaterial, irrelevant and incompetent, no time being fixed, and it wouldn't be any violation of the law if he had sold it.

A. Well, after my final proof come I got quite a number of letters through the postoffice and from different land buyers, and Mr. Pritchard being the best one I sold to him.

Q. What Mr. Pritchard, do you know?

A. I don't know what his name is now—I can't think of it—I don't know his name only Pritchard.

Q. Have you that letter?

A. I don't think I have. I looked for some letters last night, but I didn't find them.

Q. Did Mr. Pritchard offer you any specific amount of money for that property?

A. Yes, he made me two offers.

Q. I mean in his letter? A. No, sir.

Q. Well, did you go to see him about it or did he come to see you?

A. I think maybe—I ain't positive—but I believe I met him on the street in front of the Sonna Block.

Q. Well, state what occurred there.

Mr. BUNDY.—We object as incompetent, irrelevant and immaterial and calling for a transaction between parties other than the defendants, not in the

(Testimony of William W. Abrams.)

presence of the defendants here on trial, and calling for a transaction long subsequent to the application to purchase the land in question, and after the Government had given its final receipt.

A. He wanted to know if I wanted to sell and I told him I did.

Q. Was that on the street?

A. I think that conversation was on the street—I wouldn't be positive—it was a good while ago.

Q. Did you then go to his office? A. I did.

Q. The same time?

A. I think that same day.

Q. Had you ever met Mr. Pritchard before?

A. I never had any talk with Pritchard before to my knowledge.

Q. Well, did you sell it to Mr. Pritchard that day?

A. I think the same day we talked about it, I think I sold it to him, deeded it to him.

Q. How much did he give you for this land?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. I got \$800 for it, I think about that, I ain't certain.

Q. Did he pay you in cash or by check?

A. He paid me cash.

Q. How much cash did he give you on that occasion?

A. Didn't I tell you about \$800 or in that neighborhood?

Q. And was anyone there present but you and

(Testimony of William W. Abrams.)

Mr. Pritchard?

A. No, not then. I think we were alone.

Q. Did your wife take up a claim too?

A. No, sir.

Q. Did you pay Mr. Downs the \$400 that he had given you or did Mr. Pritchard keep that out?

A. I left the money right with Mr. Pritchard.

Q. You left it with Pritchard?

A. Yes, sir, I did.

Q. I will show you deed dated July 16th, 1902, and ask you if that is your signature?

A. That is my signature and that is my wife's (indicating).

Mr. GORDON.—We offer this deed in evidence.

Mr. FRASER.—We object as immaterial, irrelevant and incompetent, and for the reason that it does not tend to prove any of the allegations of the bill, the transaction occurring long after the application to purchase the land in the land office, and does not tend to prove any violation of the law.

Q. You and your wife acknowledged this deed before Mr. Pritchard, didn't you?

A. I think so, I think his signature is there, is it not?

(Marked Plaintiff's Exhibit 2.)

Q. Who was John I. Wells, Mr. Abrams?

A. He is a man that lives here in town.

Q. What was his business?

A. I think he is a kind of a broken, probably—I ain't certain what his business is.

Q. Is he a land broker, stock broker, or money

(Testimony of William W. Abrams.)

broker?

A. I think he trades in anything. I ain't certain what he does do. I see him here quite often. He seems to be a pretty good man around town.

Q. Has he any occupation now, that you know of?

A. I don't know at the present time.

Q. How long had you known Mr. Wells before the morning you went to see him to get the \$400?

A. As I told you, I don't think I ever talked to the man before in my life.

Q. Who was this man Pritchard you spoke of, what was his business?

A. He was a lawyer, I believe.

Q. Is he practicing now?

A. Why, when he gets it to do, I think so.

Mr. FRASER.—He is not here any more. He hasn't been in the state for two years.

WITNESS.—I ain't seen him for a long time.

Q. (By Mr. GORDON, Continuing.) You say you had a number of offers for this property, to purchase this property?

A. I had several letters from several different people.

Q. Do you remember who they were from?

A. I had one from a man in Idaho City, but I can't remember his name; and there was one or two from here in town, but like all other circulars I get, I done them up and throwed them away.

Q. What was the first offer Mr. Pritchard made you for this property?

Mr. BUNDY.—The defendants object as incom-

(Testimony of William W. Abrams.)

petent, irrelevant, and immaterial.

A. I think the first offer made was about \$700 or something like that, maybe a little less, I don't know.

Q. And he finally raised it to \$800 and something?

A. Just whatever it is—I forget—right in the neighborhood of \$800.

Q. When he paid you that did he keep out the \$400 for Wells and give you the balance, as you remember it?

A. I disremember just how the transaction was done—it has been quite a while ago.

Q. The best you can remember, Mr. Abrams?

A. Why, I think I told him that I owed this money and I wanted to leave it there with him, I think that is the amount of it—I ain't certain—I can't remember those things that long. If you had tackled me within three months I probably could have told you all about it.

Q. I notice that the grantee in this deed is A. E. Palmer. Did you know Mr. A. E. Palmer?

A. No, sir; I don't know anything about him.

Q. Do you remember whether this deed was made out as it is now when you signed it or did you sign it in blank?

A. The deed was already made out, but whose name was on it I don't remember anything about it at all. The deed was all made out. It doesn't seem to me it was a blank deed. I knowed at the time, but I don't remember now.

Q. Where was the deed signed—in whose office—

(Testimony of William W. Abrams.)

Mr. Abrams?

A. I signed the deed right in Mr. Pritchard's office.

Q. And you left your receipt with him at the time you signed the deed—the receiver's receipt you left with Pritchard when you signed the deed?

A. When I signed the deed I turned over the patent papers, the receipt for the patent.

Q. The receipt for patent or for the money you paid?

A. No, receipt for patent, when the patent come, there was no transaction done until after the patent had come.

Q. Is that the paper you mean that you turned over? (Showing witness paper.)

A. I didn't turn him over any paper at all until after the patent had come. The final receipt—I kept all such things myself.

Q. Did you receive a patent yourself or did you leave an order that it be delivered to somebody else?

A. No, I took it out of the office myself.

Q. What did you do with that?

A. After I made the deed I turned it over to them.

Q. Over to Mr. Pritchard, or who do you mean by them?

A. Yes, sir, Pritchard.

Q. I note here, Mr. Abrams, that this deed is signed and executed and acknowledged the 16th of July, 1902, and that the paper here, the receiver's receipt, is dated the day before that, and that the patent was not issued till two years after that.

(Testimony of William W. Abrams.)

A. The receipt for the patent, you know the receipt for the patent papers, final receipt, our filings went through.

Q. That was the paper they gave you the day you made your final proof, is it?

A. No, didn't get that paper that day. We got a receipt for our money that we paid in there each one of us, and it went to Washington, and this was done in November, wasn't it, the final proof, wasn't it made in November, November or January. The final proof papers we got was equal to the patent.

Q. (By Mr. KEIGWIN.) Mr. Abrams, did the patent that was finally issued come to you or not?

A. No, the patent itself didn't come, but this final receipt, receipt for patent.

Q. That is what you mean when you speak about patent papers? The papers that were given to you at the land office?

A. Yes, sir.

Q. And they went to Washington and came back?

A. Yes, sir.

Q. And the patent,—did it come to you?

A. No, that did not come to me. That come to the purchasers of the land.

Mr. GORDON.—We offer certified copy of patent in evidence.

Mr. BUNDY.—The defendants object as incompetent, irrelevant and immaterial.

Mr. FRASER.—Counsel for the defendants move to strike out all the evidence of this witness, together with the exhibits introduced therewith, for the reason that it is incompetent, immaterial and irrele-

(Testimony of William W. Abrams.)

vant, and does not tend to prove any of the allegations of the bill.

Mr. KEIGWIN.—Counsel for complainant state that it is their purpose to connect the evidence now in the record by other evidence to be subsequently taken.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Abrams, the first sheet in this bunch of papers which has been marked Exhibit No. 1, which you said was signed, appears to be dated October 30, 1901. About how long prior to that was it that you first conceived or thought of the idea of making an entry under the Timber and Stone Act?

A. I couldn't say, it might be two or three weeks—I couldn't say.

Q. And it was suggested to you, I think you said, by one of your neighbors, Mr. Ballentine?

A. Yes, sir.

Q. What was your purpose, thought, idea in making the application?

Mr. KEIGWIN.—Complainant objects as not being responsive to anything in the examination in chief.

A. Why, I wanted it for its worth, the same as any man.

Q. You wanted to make something out of it if you could? A. Certainly.

Q. Did you have any talk with anyone else, prior to the time you went up to make the application relative to this land, I mean?

(Testimony of William W. Abrams.)

A. No, only as men will talk in doing those things.

Q. Did you have any talk before you went up there to make your application with John I. Wells?

A. No, sir.

Q. Or with Pat Downs?

A. No, nothing only as locator.

Q. After you got up there? A. Yes, sir.

Q. Or with Governor Steunenberg?

A. No, I never talked with Governor Steunenberg in my life about that.

Q. Or with A. E. Palmer? A. No, sir.

Q. Or with Mr. Barber or Mr. Moon?

A. No, sir.

Q. See them or talk to them about it?

A. No, sir.

Q. You spoke of Mr. Snow going up with you. In what capacity did he go—to make any entry himself, or was he a teamster or not?

A. I don't know how he was connected in at all. He had a homestead up there himself, because we was in the homestead claim.

Q. Did he drive the team?

A. He drove the team, yes, sir.

Q. Whose team was it, if you know?

A. I think it belonged to some corral here on Idaho Street.

Q. Who paid for the expense of the livery team, if you know?

A. I and Mr. Folsom I think paid the expenses of the team, I am satisfied we did.

(Testimony of William W. Abrams.)

Q. Where did you first learn that you would have to pay \$25 for the locating fee?

A. I think Mr. Ballentine told me we would have to pay these locators \$25.

Q. And when you got up there and went out with Pat Downs, he showed you certain land, did he?

A. Yes, sir.

Q. Did he give you the numbers and location of the land?

A. Yes, sir, he had a township map, as I remember.

Q. Did you take down those numbers or take the map?

A. We had a map with us. I think Mr. Folsom had the map when we came back from up in the timber, back to Boise.

Q. How long after that did you go to the land office and file?

A. I couldn't say.

Q. A few days, was it?

A. A few days before we did, it might have been within a week.

Q. After you came back before you filed did you have any talk with John I. Wells?

A. No, sir.

Q. Or any man? Talk with Pat Downs?

A. Not till we went to prove up.

Q. I am speaking now before you made your filing?

A. No, sir.

Q. Did you have any talk with any of the other people I named?

A. No, sir, I did not.

Q. When you went to the land office you took the necessary witnesses and filed in the regular way?

(Testimony of William W. Abrams.)

A. I think Mr. Downs acted as witness.

Q. And you filed by filing this original statement dated October 30, 1901? A. Yes, sir.

Q. Up to that time had you had any talk with anybody relative to selling the land?

A. No, sir.

Q. At the time you made this filing, October 30, 1901? A. I had done nothing of the kind.

Q. Had you talked to anybody relative to borrowing money on it?

A. No, sir, at the time I hadn't.

Q. Did you make that entry solely and exclusively for your own use and benefit?

A. Why, certainly I did.

Q. Are the statements contained in your application of October 30, 1901, true and correct, this first application? A. Yes, sir, it was.

Q. What did you expect to do with reference to getting the money to pay up at the time you made your application? Had you made arrangements for the money or how did you expect to get it when you made your first application?

A. No, I had made no arrangements at the time at all, but I know that if a man has got something he can get the money.

Q. Something for security? A. Yes, sir.

Q. Do you remember how you came to go to John I. Wells to borrow money? A. No, sir, I don't.

Q. Isn't it a fact that about that time that the timber and stone entries, a good many people were making them about that time?

(Testimony of William W. Abrams.)

A. Yes, sir, a good many of them.

Q. And wasn't it generally known that there were some people here that were buying those timber and stone claims?

A. I think it was generally known that there was somebody here buying them at that time.

Q. Did you understand that John I. Wells was at that time engaged in the business of locating?

A. No, I never knew that John I. Wells was a locator; he might have been for all I know, because I had no acquaintance with the man.

Q. At the time you saw Mr. Wells and got this money from him, was there anything said relative to selling this land? A. No, sir.

Q. Or anything with anyone else?

A. Didn't have no talk with him relative to selling it, or anybody.

Q. Was the money you procured from Mr. Wells simply a loan from him to you?

A. That is the way I should take it.

Q. Did you tell him what you wanted it for?

A. Yes, sir, I told him.

Q. Did you state that you would repay him when you sold the land?

A. I told him I would pay him back—I didn't say anything about selling the land at all.

Q. In your final proof, at the time you made your final proof, Mr. Abrams, this question appears upon Exhibit I was asked you: "What do you expect to do with this land and the lumber on it when you get title to it," and the answer was, "I expect to hold

(Testimony of William W. Abrams.)

until there is a demand for the timber, so that I can make something from it." A. I think so.

Q. And that was your purpose, that states truthfully your purpose in making the entry?

A. That was my purpose, of course.

Q. Mr. Abrams, at the time you made your application to purchase this land, had you entered into any agreement, understanding, conspiracy, with anybody at all by which the land you were to procure from the Government should be turned over or inure to the benefit of any person other than yourself?

A. No, sir, I had not.

Mr. GORDON.—Let me ask you one question, Mr. Abrams. Didn't you have an understanding when you entered this land and proved up that you would convey it to the people that these people wanted you to, or that you would convey it to them and receive from \$250 to \$350 over and above all expenses? A. No, sir, I did not.

Mr. KEIGWIN.—Mr. Abrams, did you see Mr. Gordon yesterday at his room in this building?

A. No, sir, I didn't see Mr. Gordon yesterday.

Q. Day before yesterday?

A. Yes, sir, I seen him then.

Q. Where was he? A. Upstairs.

Q. In his room, his office in this building?

A. Yes, sir.

Q. Was anyone present besides you and Mr. Gordon?

A. Yes, I believe there was most of the time.

Q. Do you remember who it was?

(Testimony of William W. Abrams.)

A. A man named Watts. (To Mr. Gordon.) Didn't you introduce him as Mr. Watts?

Q. Do you remember saying to Mr. Gordon that either Louis Folsom or Pat Downs spoke to you about proving up?

Mr. FRAZER.—The defendant objects as immaterial, irrelevant and improper redirect examination, and tending to impeach their own witness.

Q. For the sake of refreshing his memory. Mr. Abrams, will you answer the question?

A. I don't understand you. I might have said something about it in talking of proving up, I might have said that. I don't remember whether I did or did not. I might have said it, but Pat Downs didn't say anything to me about proving up, because he wasn't here at that time.

Q. Did you tell this gentleman that you had an understanding all the time that the money was to be furnished to enable you to make the proof?

A. No, sir, I didn't say so yesterday or day before yesterday, I didn't tell him so.

Q. Did you say to Mr. Gordon and Mr. Watts that you understood all the time the money was to be furnished?

A. I didn't say anything of the kind.

Mr. FRASER.—The defendants object as immaterial and irrelevant, the transaction happening long after the application; for the second reason that it is question asked evidently for the purpose of impeaching their own witness, and for the further reason that it is improper redirect examination.

(Testimony of William W. Abrams.)

Q. (By Mr. KEIGWIN, Continuing.) You didn't say that to Mr. Gordon?

A. I didn't say that to him; he is right here.

(Witness excused.)

Mr. BUNDY.—Let this be considered as part of the testimony of the witness. (Describing papers in Exhibit I:)

Original application, dated October 30, 1901, testimony of claimant on final proof, January 22, 1902, cross-examination, same date, receiver's final receipt, issued July 15, 1902, and certificate, issued same date, all embracing the following described lands: Lots numbered 3 and 4 of section 5, township 7 north of range 5 east, and the south half of the southwest quarter of section 32, township 8 north, range 5 east of Boise Meridian.

Patent as issued under date of May 24, 1904, and embraces the same lands, issued to William W. Abrams.

[Testimony of Louis K. Burns, on Behalf of the Government.]

LOUIS K. BURNS, being first duly sworn by the Examiner, testified on behalf of the Government as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Louis K. Burns, are you?

A. Yes, sir.

Q. Where do you reside, Mr. Burns?

A. 624 South 14th St., Boise, Idaho.

Q. I will ask you whether you made a timber and stone entry November 26th, 1901, or about that time?

(Testimony of Louis K. Burns.)

A. Yes, sir.

Q. Did you ever make but the one entry under the Timber and Stone Act?

A. I made only one.

Q. I will ask you if that is your signature to that (showing witness paper)?

A. Yes, sir.

Q. I will ask you if that is your signature, Mr. Burns (showing another paper)?

A. Yes, sir.

Mr. GORDON.—I offer in evidence the entry papers in the entry of Louis K. Burns. It is the original sworn statement, dated November 26th, 1901. The next paper is the testimony of claimant, dated February 14th, 1902, cross-examination of claimant, same date, and the receiver's final receipt, dated June 24th, 1902, and the final certificate of the register, dated the same day.

Mr. FRASER.—The description of the property?

Mr. GORDON.—The northwest quarter of section 24, township 7 north, range 5 east of Boise Meridian.

Mr. BUNDY.—These stone and timber entries are numbered with the land office number. That is 1891, is it not?

Mr. GORDON.—1891.

Mr. BUNDY.—Offer them all by their number.

Mr. GORDON.—(Continuing.) Mr. Burns, do you remember who prepared that paper for you, that original paper you filed?

A. I think Jackson.

Mr. KEIGWIN.—What is Mr. Jackson's first name?

A. I don't know.

Mr. GORDON.—Who first spoke with you about

(Testimony of Louis K. Burns.)

taking up one of these timber claims?

A. Dean West.

Q. State what Mr. West had to say about it?

Mr. FRASER.—The defendant objects as immaterial, irrelevant, incompetent, and hearsay evidence.

A. He come over one morning and wanted to know if I didn't want to make a couple or three hundred and I told him, yes, and he said there is a load going up in the morning and if you want to go up and file under the timber and stone act you can go.

Q. Did you go to see anyone after you saw Mr. West about this? Did he direct you to see someone?

Mr. BUNDY.—The defendant objects to this question for the same reason as to the last preceding question.

A. He said Pat Downs was going up with a load and I could go up with him in the morning.

Q. Did you go up with Pat Downs?

A. Yes, sir.

Q. Who else went along?

A. Myself and Bill Pearson, and Harrison, and a lady by the name of O'Farrell.

Q. Where did you go, Mr. Burns?

A. We went to Centerville.

Q. And do you remember what day you got there, what time of day?

A. We got there about dark.

Q. Well, did you see the land that night?

A. No.

(Testimony of Louis K. Burns.)

Q. When did you see the land?

A. The next morning I seen it off about three or four miles; I didn't go to it. He said that was good timber and I guess he knowed all about it.

Q. Then you didn't go upon the land?

A. No.

Q. Did any of those with you go upon that land?

A. It seems to me Harrison said he had seen his on the way back. His was this side of Centerville. He seen his I think. I don't think Pearson seen his, because he took about the same as I did.

Q. Where did you get a description of your land?

A. Pat Downs told me about the descriptions.

Q. Did he give you one then?

A. I don't know whether he give me the description then or not.

Q. Was anything said about paying a locating fee?

A. Yes, sir, I was to pay \$25 location fee.

Q. Did you pay that at that time?

A. I paid it when I come back, to John I. Wells.

Q. Had you ever met Wells before?

A. I don't think I had met Wells before.

Q. Well, how long after you returned did you file your papers?

A. O, I guess a few days afterwards.

Q. Who did you see after you came back with reference to filing your papers—anybody besides Mr. Jackson?

A. John Wells.

Q. Did you take the description that Downs gave you to Mr. Wells, or did he have it there?

(Testimony of Louis K. Burns.)

A. I don't know; I guess Jackson had the description.

Q. Why did you go to see Mr. Jackson?

A. He made out my papers.

Q. Were you directed to go to see him?

A. My wife went to see him.

Q. Did you talk with Mr. Wells about this? Who directed you to go to see Mr. Jackson?

A. My wife said she would go and see him, and we both went up to the land office, and Jackson went with us.

Q. Did anybody direct you to go to see Mr. Jackson? A. No, nobody directed us.

Q. Did anybody recommend him to you?

A. My wife was acquainted with him, and she thought she had better get Jackson.

Q. Did Wells, when you went to see him—what did you go to see Mr. Wells for, before you went up to the land office?

A. Mr. Wells was my witness. He said he would be my witness when I proved up. That was all I said to Wells.

Q. Did you see Mr. Wells before you went up to view the land?

A. I believe I seen him that morning before we started, at the Pacific Hotel.

Q. Wasn't his office there at that time?

A. I guess it was, yes, sir.

Q. Why did you go there, if you remember?

A. We started about daylight from the Pacific Hotel to Centerville.

(Testimony of Louis K. Burns.)

Q. Mr. Dean West spoke to you about this; why did you go to see Wells?

A. I saw him there; he knowed there was a load going out, I guess.

Q. Do you know how he knew it?

A. I expect he knowed there was a load going up, that is all.

Q. Did you have any talk with him that morning?

A. No, I didn' say anything to him.

Q. When you came back from viewing this land you say you went to Mr. Well's office?

A. Well, I saw him in a few days, and he said he would be my witness if I wanted him.

Q. Did he say anything else about the property?

A. No, I think not.

Q. Did he say anything to you about money to prove up with?

A. Well, West told me.

Mr. BUNDY.—The defendant objects to what West said as irrelevant and incompetent.

A. (Continued.) Mr. West furnished me the money; he told me that it would cost \$410 to prove up, and Pat Downs give him the money.

Q. Now, when was this; how did you come to go to see Mr. Wells in the first instance? Did you go to see Mr. Wells or did he come to you?

A. Well, I met him on the street; he said he would be my witness to prove up.

Q. Is that the first time?

A. About the first I said to him.

Q. Who introduced the subject at that time, you

(Testimony of Louis K. Burns.)

or Mr. Wells?

A. I don't know hardly who did broach the subject.

Mr. KEIGWIN.—Was this before or after you had advertised that you met Mr. Wells?

A. I think it was before.

Q. (By Mr. KEIGWIN.) It was before you made your application, was it? A. I think so.

Q. (By Mr. KEIGWIN.) Didn't you furnish the witnesses at the time you made your application? A. Yes, sir.

Q. And you made the necessary arrangements and advertised at the same time? A. Yes, sir.

Q. Can't you remember whether this conversation with Mr. Wells occurred before or after your application?

A. I guess it was before.

Q. Do you know how long before?

A. I don't know.

Mr. GORDON.—(Continuing.) Mr. Burns, after you made your original entry, did any of these people you have mentioned speak to you about this land between that time and the time you made your final proof?

A. No, I guess not; not that I know of—I might have forgot it.

Q. Did anyone notify you when you were to make your final proof?

A. Well, I was to make my final proof when I got the receipt from the Government.

Q. Well, did you use your own money when you

(Testimony of Louis K. Burns.)

made your proof? A. No, sir.

Mr. BUNDY.—The defendant objects as incompetent and immaterial.

Q. State where you got the money and the circumstances of your getting it, please.

A. West handed me the money. He said that—

Mr. BUNDY.—We object to what West said as hearsay and irrelevant and incompetent.

A. (Continued.) He said I would get \$250 and they furnish the money to prove up on.

Q. Did they tell you where to get the money?

Mr. BUNDY.—Same objection as last above.

Q. How much money did you get?

A. \$410.

Q. And you used the money to prove up with, did you? A. Yes, sir.

Q. Did you give a note for it?

A. No, sir, I didn't give no note.

Q. And what did you understand you were to do with that property when you got it?

Mr. BUNDY.—The defendant objects as incompetent, irrelevant and immaterial, and call for the understanding of the witness. We are entitled to have the conversation, not his understanding.

A. I was to turn it over to the Barber Lumber Company; that was my understanding.

Q. Was that at the time you made your original entry?

A. West told me that morning we went up all about it; they furnish the money and give me \$250 for the timber.

(Testimony of Louis K. Burns.)

Q. And did they tell you how much money they had?

Mr. BUNDY.—Defendant objects as incompetent, irrelevant and immaterial.

A. John Wells said they had about seventy-five or a hundred thousand for that purpose in the bank here.

Q. Do you remember the day you went to pay your four hundred and some odd dollars in the land office?

A. I don't remember the day.

Q. You remember the incident?

A. Yes, sir.

Q. Do you remember who went with you?

A. Well, I think my wife when I made my final proof, my wife was with me, and I think Jackson and Wells.

Q. Did they give you a receipt at the land office the day you paid this money in?

A. I think they did, yes.

Q. Where did you take that receipt the day you got it or the day after?

A. The receipt from the Government?

Q. Yes.

A. They had an office up in the Sonna Block, and I went up there and turned it over to Pritchard.

Q. And what happened in Pritchard's office that day?

A. He just signed it over to me and he give me \$240—I was to get \$250, but I guess he took \$10 off as a rake-off himself.

Q. Was Wells with you then?

(Testimony of Louis K. Burns.)

A. Yes, sir.

Q. How did he give you this money?

A. He took it out of the drawer there and counted it out.

Q. Was there any talk about the money you had got from these parties before that cash?

Mr. BUNDY.—The defendant objects as incompetent, irrelevant and immaterial.

A. Which parties do you mean?

Q. When you were in Pritchard's office that day was anything said about the money that West had given you?

A. No, nothing said about that.

Q. They just gave you \$240.

A. \$240, yes.

Q. Did you make a deed that day?

A. No, I just give them that receipt, that is all. My wife stuck hers in her pocket; she put \$410 in her pocket and went home with it.

Q. They gave your wife \$410, did they?

A. Yes, sir.

Q. What did they give her that for?

A. For the timber. She went up and took up a claim, and she 'phoned up, and they said if you would rather have the money than the timber you can have it.

Q. Were you with your wife when they gave her the \$410?

A. No, I wasn't with her; I think John Wells give her the money.

Mr. BUNDY.—Were your present?

A. No, sir.

(Testimony of Louis K. Burns.)

Mr. BUNDY.—I ask that the evidence of the witness be stricken out.

Mr. GORDON.—Did you ever see any of these people concerning the money they had given your wife?

A. She said John Wells give it to her.

Mr. BUNDY.—I ask that it be stricken out as not responsive.

Mr. GORDON.—Did any of these people come to see you or your wife about the \$410.

A. I think Mrs. Lee.

Q. Did they ever try to get the money back?

A. They come down and tried to scare her but didn't get it.

Q. Who was that? A. Pritchard.

Q. Did you see him?

Mr. BUNDY.—The defendant objects as incompetent, irrelevant and immaterial.

A. He says, we can't be robbed this way, he said if you don't fix it up by to-morrow we will enter proceedings, but they have never entered any yet.

(Marked Plaintiff's Exhibit 4.)

At 12 M. a recess was taken until 2:30 P. M., at which time Mr. Burns resumed the stand.

Q. (By Mr. GORDON.) Mr. Burns. I understood you to say that you were to take up this claim and turn it over to the Barber Lumber Company?

A. Yes, sir.

Q. When was that understanding or agreement made?

A. That was what Mr. West told me the morning

(Testimony of Louis K. Burns.)

he see me about taking it up.

Q. That was before you went up to see the timber?
A. Yes, sir.

Cross-examination.

(By Mr. FRASER.)

Q. How long have you resided in Boise?

A. About eight years; I have been here about twenty years in the country.

Q. Where did you come from? A. Iowa.

Q. How long had you been here before you took up this land?

A. I had been here about twelve years, I guess.

Q. You were here about twelve years?

A. In Idaho?

Q. How long have you been in Idaho?

A. About twenty years.

Q. How long have you lived in Boise?

A. About eight years, I guess.

Q. What business are you engaged in at the present time?

A. I have got a few houses I rent, that is all.

Q. Have you been in the same business for the last eight or ten years?

A. I haven't been able to do anything for the last eight or ten years—I have rented the houses, yes.

Q. Did you own those houses at the time you made application for this land?

A. My wife did, they are in her name.

Q. Were they unencumbered?

A. Yes, they was *encumbered*.

Q. You haven't done anything yourself during

(Testimony of Louis K. Burns.)

this period of time?

A. I wasn't able to work at all.

Q. Who was the first one that spoke to you about this matter? A. Mr. West.

Q. What is his first name? A. Dean West.

Q. Is he a neighbor of yours? A. Yes, sir.

Q. Had you known him quite awhile?

A. Four or five years.

Q. At the time he talked to you about this land, before you went up to look at it?

A. I think I went up the next day.

Q. What did he say to you about the land at the first interview before you went up?

A. He wanted to know if I wanted to make a few hundred and I told him yes, and he said to go up there and take up a timber and stone claim, and I could get \$250 for it.

Q. Did he say he would give you \$250 for it?

A. No, he said I could get it.

Q. Did he tell you who would give you that?

A. Good told me.

Q. I am asking you if he told you who would give you \$250 for that land.

A. I think he said the Barber Company would give me that.

Q. Are you satisfied that is what he said?

A. I think that is what he said.

Q. You are positive he told you before you went up there that you could get \$250 from the Barber Lumber Company? A. Yes, sir.

Q. Did you have any contract with anybody to

(Testimony of Louis K. Burns.)

sell your land?

A. I didn't have no contract with anybody then.

Q. Did you have any agreement before you went up to look at the land that you would sell it?

A. No, I didn't have no contract.

Q. Did you have any agreement to sell it? Did you agree with anybody to sell it?

A. No, I didn't.

Q. You went up the next day after this conversation? A. I think it was the next morning.

Q. Where did you start from?

A. Started from the Pacific Hotel.

Q. You walked from your home to the Pacific Hotel? A. Yes, sir.

Q. Did your wife go with you?

A. No, she didn't go.

Q. Who did you meet at the Pacific Hotel?

A. I met Pat Downs and John Wells.

Q. Did they go up with you?

A. Pat Downs drove the team up.

Q. Did you have any conversation there at that time with Pat Downs or Wells, or did you just see them there that morning?

A. Wells, Pat Downs come around there after us to the hotel.

Q. What did he say? Get in the wagon?

A. Yes, sir, four of us went up.

Q. Was that about all the conversation you had with Pat Downs that morning?

A. I didn't say anything more to him.

Q. Did you say anything to Wells that morning?

(Testimony of Louis K. Burns.)

A. No, sir.

Q. Then you left and drove up to Centerville?

A. Yes, sir.

Q. What time did you get there?

A. About dark.

Q. Did you remain over night? A. Yes.

Q. Was there anything said that night?

A. No, nothing said.

Q. The next morning you looked at the land and started home, did you?

A. Yes, we started home after we looked at the timber.

Q. What time did you get back home?

A. About ten o'clock at night.

Q. Did you pay anybody for locating you on this land? A. I paid \$25.

Q. Who to? A. I think it was Wells.

Q. When did you pay this money, when you came back or before you went?

A. Came back, I guess.

Q. Was it the day you came back or when?

A. I don't remember, the next day—day or so anyway.

Q. Was it before you made your application in the land office or after?

A. I guess it must have been after.

Q. Was it the day after the same day? The day you made the application in the land office or several days after?

A. I can't remember anything much about that.

Q. I want you to remember as well as you can.

(Testimony of Louis K. Burns.)

A. I know I was out \$25 for locating.

Q. When did you pay it?

A. I borrowed the money, I think, and paid it to him.

Q. You think you went and paid it to Wells himself?
A. Yes, sir.

Q. At this time, after you filed the application and paid the \$25 did you have any agreement or contract to sell it to the Barber Lumber Company then?

A. No, I guess not.

Q. Do you know whether you did or not?

A. I didn't have a contract with the Barber Company.

Q. Did you have any agreement or contract with anyone?

A. I got a letter from one man wanting to know what I would take for it, from a man up here at Centerville.

Q. And you told him you hadn't got your receipt?
A. Yes, sir.

Q. Did you enter into a contract to sell it to anybody before you got your receipt?
A. No.

Q. Did you have any agreement with anybody before you got your receipt, by which you were to turn the title to this land over?

A. No, I didn't have no agreement.

Q. All there was then was this man West told you if you would take up this land you could make \$250; was that it?
A. Yes, sir.

Q. That was as far as the matter progressed?

A. Yes, sir, he said I could make \$250.

(Testimony of Louis K. Burns.)

Q. I want to call your attention—

WITNESS.—I can't remember everything exactly.

Q. I want you to remember as well as you can, Mr. Burns. See if that is your signature?

A. Yes, sir.

Q. That is your application to enter this land at the land office? A. Yes, sir.

Q. It is dated November 26, 1901. You note that you made that out—whose handwriting is that?

A. I thought Jackson wrote it out.

Q. Is that Lawyer Jackson? A. Yes, sir.

Q. Is it O. E. Jackson? A. Yes, sir.

Q. You went up to him of your own volition, didn't you?

A. I think I got him to write that.

Q. You went up of your own volition, you and your wife, to get him to make out these papers?

A. Yes, he charged me a dollar for making them out.

Q. Did you appear before the grand jury in this district and testify in regard to these facts, Mr. Burns?

A. Yes, sir, I testified as well as I knew how.

Q. How many times? A. Once.

Q. Did you talk to Mr. Ruick about this matter?

A. Yes, sir. He was there and questioned me.

Q. Have you talked to Mr. Gorndon about it?

A. A little, yes.

Q. When was the conversation had with Wells—or was it Wells who told you that the Barber Lum-

(Testimony of Louis K. Burns.)

ber Company had seventy-five or a hundred thousand in the bank; was that at the time you made this application in 1901?

A. I don't know when it was. One day he said they had about seventy-five thousand lying over there in the bank.

Q. When was this?

A. In the spring, some time.

Q. In what year? A. '91.

Q. What '91 do you mean?

A. Well, '91, wasn't 1901.

Q. Was it the year you made this up (showing witness paper)? A. Yes.

Q. Did you have any conversation with Wells until after you filed this in the land office, Mr. Burns?

A. No, I guess not.

Q. You did not? A. No, sir.

Q. So then the conversation you had with Wells in which he told you this—if he did tell it to you—was after you filed this application to enter the land—it was after November 26th, 1901, wasn't it?

A. I guess so.

Q. Is that as near as you can place the date?

A. That is as near as I can come to it.

Q. It was some time after this?

A. I guess it was.

Q. Was it in 1901 or 1904 that you had this conversation with Mr. Wells?

A. I think it was 1901.

Q. Are you sure it was 1901?

A. I can't remember just when it was.

(Testimony of Louis K. Burns.)

Q. Did you tell the grand jury that you had this conversation in which he said there was a hundred thousand of the Barber Lumber Company's money in the bank here?

A. I didn't tell them that.

Q. Did you tell Mr. Gordon that?

A. I did.

Q. Did you tell him that was in the year 1901?

A. I didn't know when it was.

Q. And you don't know when it was now?

A. No, sir; I do not. It was about the time we was taking up claims here.

Q. You say it was after this; was it before or after you made your final proof on this claim?

A. It was before I made my final proof.

Q. Your final proof was made June 22, 1902.

A. Well, I went up there in February, and got my receipt in June.

Q. Got a receipt June 24th?

Mr. BUNDY.—Final proof was made February 14th, 1902?

Mr. FRASER.—Yes, sir.

Mr. BUNDY.—Between November and that date.

Mr. FRASER.—(Continuing examination.) You are sure now it was before you made your final proof?

A. I think it was, yes.

Q. Now, regarding this \$400 which your wife got, did she file on timber claim too?

A. She went up after I did.

Q. Did she file on a timber claim?

A. She filed on a timber claim, yes, sir.

(Testimony of Louis K. Burns.)

Q. Who did she get this money from, did you say?

A. I think Wells give her that money.

Q. Do you know he gave it to her?

A. I don't know it to be a fact.

Q. You don't know anything about it of your own knowledge?

A. No, sir; I didn't see him pay it to her.

Q. When did she get it?

A. At the time she made her final proof.

Q. When she drew down that money where did she get it?

A. At the land office.

Q. Then she drew it down after she made her final proof, didn't she?

A. No, she didn't make no final proof, and she said she was tired of waiting on it, and they said if you want your money you can have it.

Q. You say that at the time you made your application to enter this land you notified the land office of the witnesses to prove up on it. Is that a fact? Did you give at the time you filed your application to enter that land, did you tell them who your witnesses would be on final proof?

A. John Wells was one of them.

Q. Did you tell the land office? Examine that docket, see if you see John Wells' name there as a witness that you submitted on final proof?

Mr. KEIGWIN.—What is that?

Mr. FRASER.—That is the application to enter the land.

A. (By WITNESS.) I know he was one of them.

(Testimony of Louis K. Burns.)

Q. When did you tell the land office he was one of them? A. I don't know.

Q. You don't know?

A. I don't know anything about it.

Q. You don't know that, do you?

A. I don't know a thing about that. I met John Wells and he said he would be my witness.

Q. Who did you say gave you the money to make your final proof? A. Dean West.

Q. And how many days before you made your final proof did you have that money?

A. Well, I had it till I got my receipt from the Government.

Q. How many days before?

A. Two or three months before I got the receipt.

Q. I mean when you sent up to the land office, how long after he gave it to you before you turned it in to the land office?

A. It was in the bank awhile; I don't remember how long.

Q. How long after you got it before you turned it over to the land office? How long ahead of time did you have this; a few days?

A. I don't know how long it was; I had it in the bank until I got ready to use it.

Q. About how long?

A. I guess it must have been thirty days or sixty; it was about three months before I got any receipt.

Q. Three months from what time before you got your receipt?

A. I didn't get my receipt until three months

(Testimony of Louis K. Burns.)

after I took up my claim; I had to advertise it sixty days. I got it but I didn't use it for I guess two or three months before I proved up.

Q. You don't know exactly when you got it?

A. I don't know exactly when I got it or how long I kept it.

Q. Did your wife pay the \$25 for being located on lands up there?

A. I don't know what she done; she borrowed the money—she borrowed enough from Scott Neal.

Q. Did you get the money from your wife that you gave to Wells yourself for filing on, or locating you?

A. She got that money herself.

Q. Where did you get yours?

A. I got that of Scott Neal.

Q. And that you think you paid two or three days after you filed on the land?

A. I don't know when it was.

Q. That is as near as you can recollect, it is?

A. That is as near as I can recollect, yes. It has been so long a man can't remember every little thing—I can't.

Q. So long that you don't remember much about it, do you?

A. I remember some things all right and some I don't.

Q. When you had the talk with Wells in regard to the Barber Lumber Company having seventy-five or a hundred thousand dollars, where was that conversation, where was it held?

A. We was just walking down that way, and he

(Testimony of Louis K. Burns.)

said they have got about seventy-five thousand in that bank now, the Government bank.

Q. Which bank?

A. The Boise National.

Q. Who said that, West or Wells?

A. Wells.

Q. What did he say at that time about the Barber Lumber Company?

A. He didn't say anything about it—only said they had that much money there.

Q. Did he say who they were or what they were?

A. No, sir.

Q. Did he say what they were doing with it?

A. He said he guessed that was what they had that money there for.

Q. What for? A. This timber business.

Q. He told you that, did he?

A. He told me that was what they had it for I think.

Q. What else did he tell you?

A. That is all.

Q. No other conversation of that kind?

A. Just a few words?

Q. When was this, as near as you can tell?

A. I think it was in March, February or March, 1901, I believe.

Q. February or March, 1901? A. Yes, sir.

Q. Are you sure that was the time?

A. I don't remember when it was—I can't—it was in the winter—I don't know exactly what month.

Q. Do you know what year it was?

(Testimony of Louis K. Burns.)

A. I think it was 1891 or 1901—I don't know—I guess it was 1901, unless I am mistaken—I don't know which.

Q. Are you sure it was 1901?

A. I believe it was.

Q. In the year 1901? A. Yes, sir.

Q. And what did he say in regard to the money, whose money it was? Did he say we have got that much money here or did he say somebody else had it here?

A. They have got that much money in the bank.

Q. That ain't the Barber Lumber Company.

A. He didn't say it was the Barber Lumber Company, but I knowed what he meant.

Q. He said that we have that much money here, did he? A. He said they had.

Q. Did he say the Barber Lumber Company had?

A. No, he didn't say the Barber Lumber Company.

Q. He didn't say that; he just said they had? Did he say they have that much money in the bank to buy timber claims?

A. I guess that is what he meant all right?

Q. I am asking you what he said. Did he mention the Barber Lumber Company at that time?

A. No, he didn't mention it.

Q. Then you were mistaken, were you, Mr. Burns, when you said "he said the Barber Lumber Company had that much money here"?

A. I don't think he mentioned it.

Q. Are you sure he didn't mention it?

(Testimony of Louis K. Burns.)

A. I don't think he did.

Q. You don't think he mentioned the Barber Lumber Company? A. No, sir.

Q. He said they have seventy-five or a hundred thousand in the bank there. Is that the words he used?

A. Yes, sir, he said about seventy-five thousand.

Q. Is that all he said at that time?

A. That is all, I think.

Q. And you hadn't heard of the Barber Lumber Company at the time Dean West first talked to you about locating this ground, had you?

A. I didn't know anything about it till he come to see me about it.

Q. You didn't hear anything about them at that time, did you?

A. No, I had heard nothing about them.

Q. West didn't say anything about them, did he? Or did he just say you could make \$250?

A. He said I could make \$250, yes.

Q. He didn't tell you who you could make it off of? Did he name any man?

A. He said they furnished the money to prove up with; I think that is all he said.

Q. Did he mention who they were by name?

A. I don't remember whether he did or not.

Q. Do you remember him mentioning any name at that time that would give you the \$250?

A. I don't think so.

Q. You don't think he mentioned any name?

A. I don't think he did.

(Testimony of Louis K. Burns.)

Q. The best of your recollection is that he didn't?

A. The best of my recollection is that he didn't mention the Barber Lumber Company or anybody else.

Q. Or he didn't mention anybody else?

A. No, sir.

Q. Mr. Burns, is that correct or is your other answers correct? Do you mean to state now that Mr. West told you the morning before you went up that the Barber Lumber Company would buy this claim, that he mentioned the Barber Lumber Company?

A. I don't believe he mentioned their name, no.

Q. Then that answer was not correct, was it?

A. I guess not. I forget what I did say hardly. I know he said I could make \$250, but I didn't make it all right.

Q. Mr. Burns, you got letters from other people to buy this land except the ones you sold it to, didn't you?

A. I got one letter from Hyatt up in the Basin wanting to know what I would take for it.

Q. What did you tell him?

A. I did tell him I couldn't sell it because I had no patent yet.

Q. And you didn't attempt to sell it until you did get the final receipt?

A. I turned it over to Pritchard.

Q. You didn't attempt to do that until you got your final receipt? A. No.

Q. At the time you went up to look at this land, and at the time you made your application, you

(Testimony of Louis K. Burns.)

hadn't any particular individual in view as to who you would sell this land to?

A. I didn't know whether I would sell it at all or not.

Q. You expected to sell it for the best possible price, didn't you?

A. I thought maybe it was a swindle.

Q. You expected to sell it to the best advantage if you sold it at all? A. Yes, sir.

Q. And you hadn't any particular individual in view at that time?

A. No, sir.

Q. You were in the market to sell it for the best price, were you not?

A. I thought I had a buyer, but I didn't know?

Q. And you located this as you would locate any other land, with the expectation of selling it to whoever would give you the best price?

A. I located it for my own benefit—that is, it would benefit me if I got the money for it.

Q. And you never attempted to make a sale of it until after you got your final recenpt?

A. No, I didn't try to sell it.

Q. And you had no agreement or understanding in regard to it until after that time?

A. No, sir.

Mr. BUNDY: (Continuing cross-examination.) Now, Mr. Burns, you changed your evidence a little, I presume from a better recollection about this.

A. I didn't mean to lie about it.

Q. I want to find out something about this origi-

(Testimony of Louis K. Burns.)

nal talk. Evidently you had told Mr. Gordon, in your talks with him, that Dean West told you in the morning you went up to make your original filing that the Barber Lumber Company would pay you a profit of \$250 on it. Did you tell that to Mr. Gordon?

A. I think I did.

Q. And did Mr. Gordon know that you were going to testify to that on the stand?

A. He didn't know anything about it.

Q. You told him you would testify to that?

A. No, I didn't.

Q. You understood he was asking you what your evidence would be, did you not?

A. Yes, sir.

Q. Did Mr. Gordon tell you you were mistaken about that?

A. I guess not.

Q. Did Mr. Gordon make notes of what you were telling him?

A. I don't remember what we did say, but I said there was 250 in it, he said there was \$250 in it.

Q. You understood him to mean by that that you could sell it at a profit of \$250?

A. He said they would furnish me the money to prove up and give me \$250 for it.

Q. And you could get the money to prove up, that was your understanding, that you could sell it and get advance money enough on the sale to pay the land office charges?

A. Yes, sir.

Q. That was in November, 1901?

A. I think it was.

Q. Now, at that time you never heard of the Bar-

(Testimony of Louis K. Burns.)

ber Lumber Company, had you?

A. Never heard of it.

Q. What I want to find out particularly is, this talk you had with Mr. Gordon now—

A. (Interrupting.) I can't hardly remember what West did say—it has been so long I forget.

Q. You told Mr. Gordon what you testify to when he was asking you questions?

A. I thought West did say the Barber Lumber Company would give me \$250, that is what I thought, maybe I am mistaken.

Q. What do you think now?

A. I don't remember now what he did say.

Q. Did Mr. Gordon tell you that you was mistaken about that, if you told him that?

A. He didn't say anything about it to me.

Q. Did you tell Mr. Gordon about this other conversation about seventy-five thousand dollars being in the bank; did you tell him it was Barber Lumber Company money?

A. I thought it was; they said they had the money in the bank; I thought it was Barber's money.

Q. You got that information from what Wells told you? A. Yes, sir.

Q. And that was some time between the time you made your application and the time you made your final proof?

A. I don't remember that at all. We got to talking a little there and he said we have \$75,000 in the bank.

Q. That was before you made your final proof?

(Testimony of Louis K. Burns.)

A. I guess it was, yes.

Q. In your direct examination, when Mr. Gordon was asking you questions you said Mr. Wells told you the Barber Lumber Company had \$75,000. Is that a mistake?

A. That is what I thought he meant all right.

Q. That is what you thought he meant, but he didn't say so?

A. He said they had; he didn't say Barber.

Q. Did you tell Mr. Gordon—you said Barber?

A. Maybe I did.

Q. If you did, did he say it was a mistake, did Mr. Gordon tell you it was a mistake?

A. He didn't say anything about it.

Mr. FRASER.—(Continuing cross-examination.) At the time you proved up on this land, Mr. Burns, I will ask you if this question wasn't asked you. "Where did you get the money with which to pay for this land and how long have you had it in your possession" (the witness may see it) and see if that isn't your answer to that question. Isn't that your answer to that question? I will read it: "I sold my ranch, 120 acres, at \$50 per acre last fall. Have had the money in my possession since then." Question: "Have you kept a bank account during the past six months, and if so, where?" Answer: "Yes, sir, Bank of Commerce and Capital State Bank." Was that your answer to those questions?

A. Yes, sir, that is my answer. We did sell the ranch.

Q. Is that answer correct as to where you got the

(Testimony of Louis K. Burns.)

money to prove up?

A. That is what I said.

Q. Was it true or was it not true?

A. It was true all right.

Q. Then you didn't pay for this land with the money you got from Dean West, did you?

A. Yes, I used that money.

Q. Did you use any money you got from the sale of your ranch? A. No.

Q. This can't be correct, can it, when you told the land office you used the money you got from the sale of your ranch, you didn't tell the truth did you?

A. They said they would furnish the money, so I took it.

Q. Who said?

A. He said they would furnish the money, \$410.

Q. I am asking you whether this is the truth or not, whether you paid for the land with money you got from the sale of your ranch? A. No, sir.

Q. Then you didn't state the truth to the land office, did you, at the time you made this final proof? Is that the truth or is it not? Did you pay for it with the money you got from your ranch, Mr. Burns?

A. No, I think I didn't.

Q. Then that answer wasn't true, was it?

A. It looks that way.

Q. It looks as if it is untrue, don't it?

A. Yes, sir.

Q. As a matter of fact, it was untrue, wasn't it?

A. I had the money but I didn't use it.

Q. I am asking whether this answer is true or not

(Testimony of Louis K. Burns.)

true. This was made under oath before the land office. Is it true or is it not true? You can answer that question. You know whether you paid with the money you got from the ranch or not. You can answer that; it is a simple question. Is this answer here true or untrue? (Witness hesitates.)

Mr. BUNDY.—I will ask the examiner to tell the witness to answer the question, is that answer true or is it not true?

The EXAMINER.—I presume the witness thinks there may be something to come afterwards with reference to that. I think you may answer the question, witness.

A. I guess it ain't true all right.

Q. It wasn't true then at the time you made it, if it ain't true now? A. I guess not.

Redirect Examination.

(By Mr. GORDON.)

Mr. KEIGWIN.—We offer in evidence now certified copy of the patent of the United States to this witness for the land described in his entry papers, the certificate of recordation, and the local registry deeds, and we offer also the deed given by this witness running in favor of A. E. Palmer, and bearing date the 18th of September, 1902.

(Plaintiff's Exhibit 5 and 6 marked.)

Mr. FRASER.—Counsel for the defendants object as incompetent, irrelevant, and immaterial, no foundation having been laid for their introduction, and for the reason that the testimony of the witness does not tend to prove any of the allegations of the

(Testimony of Louis K. Burns.)

complaint and does not tend to show any fraud or any violation of any law of the United States.

Mr. KEIGWIN.—In addition to that we offer from the files of the land office the register's original notice for publication, a copy of the register's certificate, and the proof of publication by the affidavit of the publisher.

Mr. FRASER.—Same objection as to above-mentioned documents.

Mr. GORDON.—(Redirect examination.) Mr. Burns, when that \$410 was given to you was anything said to you by the person that gave it to you where you were to say you got that money or what you would say about it?

Mr. FRASER.—The defendants object as incompetent, irrelevant and immaterial, and hearsay evidence, and wouldn't tend to bind any defendant in this action.

A. Well, I was out just about that time, and he give it to my wife; I wasn't there when he give it to her. He give it to her to give to me.

Q. Do you remember at any time of John I. Wells or Dean West saying to you that the Barber Lumber Company had \$75,000 or \$100,000 in the bank to be used for purchasing timber lands here?

A. They had \$75,000 in the bank. He said they—he said—I don't think he mentioned Barber.

Q. Did anyone lead you to believe that was Barber Lumber Company money?

Mr. FRASER.—Objected to as incompetent, im-

(Testimony of Louis K. Burns.)

material, and calling for the conclusion of the witness.

A. I thought it was all the time myself.

Q. What made you think so?

Mr. FRASER.—Same objection as last above.

A. They were to furnish the money around here to prove up with and I thought it was their money.

Q. From whom did you learn they were furnishing money to prove up with?

A. Lots of them got money to prove up with; that is the reason I thought it was their money.

Q. What reason did you have for believing it was Barber Lumber Company money, Mr. Burns?

A. I just guessed at it.

Q. What made you guess it?

A. I thought it was.

Q. What made you think so?

A. They furnished me \$400; I thought they was furnishing the balance of them.

Q. Did you know whether Dean West or John I. Wells were in any way connected with the Barber Lumber Company?

A. West he distributed money around for several. I don't know who give him the money or where he got it, but he distributed it around to several of them.

Q. Did he tell you where he got it from?

Mr. FRASER.—The defendants object as immaterial, irrelevant, and incompetent, and hearsay evidence.

A. I think that Wells give it to me.

(Testimony of Louis K. Burns.)

Mr. FRASER.—Move to strike out the answer as not responsive.

A. (Continued.) I think he told me Wells give him money to hand around.

Mr. BUNDY.—That is, Dean West told you?

A. Yes, sir.

Recross-examination.

(By Mr. BUNDY.)

Q. Now, Mr. Burns, let us try and understand each other, so that there won't be any mistake about this. You have testified here, and I suppose you intended to, that you supposed the Barber Lumber Company was furnishing money for people to prove up on because the Barber Lumber Company furnished you \$400. That is a correct statement of your evidence, is it not?

A. Yes, sir, I guess it was.

Q. And the money that was furnished you to prove up on was furnished you some time before you made your final proof, was it not?

A. Pretty close to when I made the final proof, I guess.

Q. And your final proof was made in February, 1902, was it not? A. I guess it was.

Q. So that the money which was furnished to you and which you say was Barber Lumber Company money was some time before February, 1902, was it not?

A. Some time before that, wasn't it?

Q. Some time before the day you made your final proof?

(Testimony of Louis K. Burns.)

A. Yes, it was before I made my final proof.

Q. Now, you have testified that the Barber Lumber Company furnished you that money. Did you ever see any of the Barber Lumber Company officers?

A. It was just what I thought they furnished the money.

Q. You have testified that the Barber Lumber Company furnished you \$400 in money. Do you know any of the officers of the Barber Lumber Company?

A. No, sir.

Q. Did you ever meet any of them?

A. No.

Q. Did you ever see any of the agents of the company to know them?

A. Well, I don't know whether these fellows was their agents or not.

Q. Who?

A. West and Downs.

Q. Do you know when the Barber Lumber Company was organized?

A. I don't know about it.

Q. Don't you know it was more than a year after you made your final proof?

A. I don't know.

Q. If it was, then your whole idea of where you got the money was wrong?

A. I got the money all right.

Q. If the Barber Lumber Company was not organized until long after you made your final proof then your whole guess as to where this money was coming from is wrong?

(Testimony of Louis K. Burns.)

A. I guess they had no mill at that time.

Q. If as a matter of fact there wasn't such a company in existence then your guess as to where you got this money is all wrong is it not? If there was no such company in existence at the time you made your final proof, then your evidence here as to your guess of where that money came from is all wrong, isn't it?

A. Maybe, I don't know—I don't suppose they was organized until they got this timber anyway, did they?

Q. Are you testifying on the state, Mr. Burns, from what you know or from what you guess?

A. I am telling what I think is the truth.

Q. Are you testifying from what you know or from inferences of what has been told you by Mr. Gordon, Mr. Sharp, Mr. Ruick and other special agents? Are you testifying from your own personal knowledge or from information given to you by Mr. Sharp, Mr. Ruick, Mr. Gordon, and other special agents of the Government?

A. They never said anything to me about it.

Q. Haven't they told you about these things you are testifying about?

A. They never told me anything.

Q. You haven't had any talk with them?

A. He asked me a few questions here.

Q. And you told him you got this money to prove up on from the Barber Lumber Company?

A. I thought it was.

Q. Did you tell him you got it from the Barber

(Testimony of Louis K. Burns.)

Lumber Company? A. Yes, I did.

Q. Was that true?

A. I guess I didn't get it from the company.

Q. Was it true?

A. No, I guess I didn't get it from the company.

Q. Did Mr. Gordon tell you that couldn't be true? A. No, sir.

Q. He let you go on and testify to that here?

A. He didn't say anything about it.

Q. Who was the first man you talked with? What was the first government official you talked with after you made your final proof and sold your land?

Mr. KEIGWIN.—Objected to as incompetent.

A. Sharp come down there once.

Q. Did Sharp have some talk with your wife too about her claim?

Mr. KEIGWIN.—Objected to as incompetent.

Q. Did you and Mr. Sharp have some trouble over your affairs there at home?

Mr. KEIGWIN.—Complainant objects as incompetent and irrelevant.

Q. And then, did Mr. Sharp tell your wife that he would get the money back for her that she had deposited?

A. I never heard anything about that at all.

Q. Don't you know it was Mr. Sharp that got your wife's money back?

A. I never heard it before till you spoke about it.

(Testimony of Louis K. Burns.)

Q. Mr. Burns, why did you not make your final proof?

A. He come down there and said it would be all right. He was trying to find out who had money and who hadn't.

Q. He made an investigation of your case, did he, and passed it, did he not? A. Yes, sir.

Q. And caused final receipt to be issued?

A. I don't know about that.

Q. One was issued shortly after he came there wasn't it?

A. He was about the first man that was in the country here.

Q. And shortly after he visited you a final receipt was issued, was it not?

A. I didn't get a receipt until a long time after I saw him; he was here to find out who had money and who hadn't.

Q. He was asking you after he came, and saw you and asked you all about your claim, did he not?

A. He came to us to see if we had money to prove up with necessary. He said there was lots of them here didn't have a dollar and would swear they had money.

Q. Did you tell him you had committed perjury in making your proof?

A. I don't think I had made it then.

Q. Did you ever tell Mr. Sharp that you had committed perjury when you made your final proof?

A. I never told him anything about it,

Q. Did Mr. Sharp tell you that if you would tes-

(Testimony of Louis K. Burns.)

tify on the stand he wouldn't prosecute you?

A. No that I know of.

Q. Did he tell your wife, that?

A. Not that I know of.

Q. Did Mr. Ruick tell you, that?

A. No, sir.

Q. What induced you to go to the land office and swear that you knew to be false, Mr. Burns? Why did you do it? Can you answer the question?

A. I don't know.

Q. What induced you to come on the stand to-day and testify to what you have testified to?

A. I aimed to tell the truth to-day; I tried to, anyway. I might have forgot several things.

Q. Why will you tell the truth to-day and not tell the truth at the time you made your final proof?

A. I aimed to tell the truth this time, hit or miss.

Q. The fact of the case is, you lied before to make \$250?

A. I didn't make \$250.

Q. That is what you thought you were going to make, and that is what induced you to tell a falsehood, is it not, isn't that true? It was the hope of making \$250 that induced you to swear to what you knew to be false before the land office, is that true?

A. It may be.

Q. And Mr. Burns, it is the hope and expectation that you won't be prosecuted that has induced you to come on the stand and testify falsely, to-day?

A. I didn't testify falsely.

Q. Didn't you testify twice, in response to questions by Mr. Gordon, that Mr. Dean West said the

(Testimony of Louis K. Burns.)

Barber Lumber Company would give you \$250 for this claim? During the noon hour, didn't Mr. Gordon tell you that wasn't true?

A. No, sir. You can find out by asking Dean West.

Q. Now, I think you testified, among other things, Mr. Burns, that the Barber Lumber Company gave you the money to prove up on, and then I think you afterwards testified that they didn't do any such thing; somebody gave the money to your wife.

A. They give it to my wife; I wasn't home.

Q. Do you know anything about where she got it?

A. Dean West told me.

Q. All you know about it is where Dean West told you?

A. That is all.

Q. Personally, of your knowledge, you don't know where you got the money?

A. Dean West left it there for me, and that is all I know about it.

Q. And did Dean West tell you that he had left \$400 of the Barber Lumber Company's money there for you?

A. No, sir.

Q. Did he tell you that he was leaving it there to pay for your land?

A. He didn't tell what he left it for at all. He left it there for me; he told my wife it was for me, and I wasn't there, and he give it to her.

Q. At that time you had agreed to sell that land to Dean West?

A. No, sir; to nobody.

Q. Had you promised to sell it to anybody?

A. No, sir.

(Testimony of Louis K. Burns.)

Q. Had anybody asked you to sell it at that time?

A. No, sir.

Q. At the time you made your final proof, had anybody in God's world ask you to sell that land, or had you promised to sell it or an interest in it to anybody?

A. No, sir.

Mr. BUNDY.—On the record we desire to move to strike out all the evidence of this witness, together with all exhibits, for the reason that it is incompetent, irrelevant and immaterial, and does not tend to establish any of the issues made by the pleadings in this case.

Mr. KEIGWIN.—Counsel for the complainant repeat their statement that they expect to connect this testimony with the acts and transactions of the defendants by other testimony in this case.

(Witness excused.)

[Testimony of Dean West, on Behalf of the Government.]

DEAN WEST, being first duly sworn by the examiner, testified on behalf of the complainant, as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Dean West? A. Yes, sir.

Q. How long have you resided in Boise, Mr. West?

A. Ten years in April, since I came here.

Q. What is your occupation?

A. Well, sir, I am a millwright by trade, but I have worked at millwrighting and carpenter work; the last few years I have worked at milling.

(Testimony of Dean West.)

Q. Where do you reside at Boise now?

A. 612 So. 14th St.

Q. Do you occupy the house alone?

A. No, sir.

Q. Who else lives in that house with you?

A. A man by the name of Downs, Patrick Downs.

Q. Mr. West, did you take up a timber and stone claim on or about October 26th, 1901?

A. I took a timber claim up, yes, sir; under the Timber and Stone Act, I should judge, about that time—I couldn't say as to the date.

Q. Who first suggested to you the taking up of claims? A. My brother in law, Samuel Dye.

Q. Is Mr. Dye living or dead?

A. He has been dead some years.

Q. What did Mr. Dye say to you about it?

Mr. FRASER.—The defendants object as incompetent, irrelevant, immaterial and hearsay evidence.

A. He said to me that they wanted to get up a load to take up some timber up in the Basin country about Centerville, and if I wanted to take up a claim, I could go with them, he told me, if I paid \$25 for location, for filing and so on, he told me there was \$250 in it for me over and above expenses.

Q. Did you see anyone concerning that before you went up there?

A. No, sir; he is the only one, I talked to in regard to it at all.

Q. Did you go the day after he spoke to you about it? A. The next morning, yes, sir.

Q. Who went with you?

(Testimony of Dean West.)

A. My brother in law, Samuel Dye, and his son, and John Keene.

Q. Where did you go, what place?

A. Why, we went to Centerville, as I understand.

Q. And who located you?

A. Well, sir, Mr. Downs, and Mr. Snow were there, and my recollection is that they were both with us up to the time that I saw the land that I was to file on, and went over it with us. I never had met the gentlemen before, either one of them, but my brother in law had a note to them and they showed us over the land, my recollection is.

Q. Do you know who wrote the note?

A. I think John Wells.

Q. Did you pay a locating fee?

A. Yes, sir.

Q. Who to? A. I paid it to John I. Wells.

Q. Did you pay that before you went up to view the timber, or afterwards?

A. Not till after I had got my filing on the land.

Q. When you were up there, did either Mr. Snow or Mr. Downs give you a description of the property?

A. Why they showed us over the ground and claimed to show us the corners of the land. We were driving along the road, and I think we were on foot part of the time.

Q. Did either one of them give you a written description of the property?

A. No, sir; any further than I think they gave my brother in law the numbers and so on, that each

(Testimony of Dean West.)

one had looked at after they was brought down to Mr. Wells.

Q. Do you remember who prepared those original papers for you, the sworn statement, the first paper you filed in the land office?

A. No, sir; I don't know—I couldn't say—I don't know whether I made them out myself or not. My recollection in that is that whatever was necessary I had done, but the particulars about it I couldn't state.

Q. Now, when you came to make your final proof, did you use your own money?

Mr. FRASER.—Objected to as incompetent, irrelevant and immaterial.

A. I got the money from John I. Wells that I paid for my—

Q. That you made your final proof with?

A. Yes, sir.

Q. How much was it?

A. My recollection is four hundred and some odd dollars—I couldn't say exactly now.

Q. When did you first learn that you could get that money from John I. Wells?

A. I didn't know who I was to get it from at the time I made the location, but was told afterwards if I needed any money to prove up with where I was to go to get it.

Q. Who told you that?

A. I think my brother in law.

Q. And did you go to see Mr. Wells, or did he come to see you?

A. I think I went to his office a day or so before

(Testimony of Dean West.)

I made final proof.

Q. Did you seek him, or did he hunt you up?

A. I couldn't say as to that, how that was.

Q. See if you can remember?

A. I can't remember the particulars about it further than as I recollect I got the money a day or so before I made proof.

Q. When was it you learned you could get the money to prove up with? Was that before you entered the claim or afterwards?

A. Afterwards, but I was told that there was \$250 in it for me if I wanted to go, but I didn't know who was going to pay it.

Q. What did you suppose you had to do to get that \$250?

Mr. FRASER.—The defendant objects as incompetent, irrelevant, and immaterial, and asking for a conclusion of the witness.

A. Why, as I understood, I had to pay out and get my final receipt in order to raise any money on it.

Q. Was anything said to you when you got the money from Wells, by Wells, or anyone else as to what you were to say when you went to the land office with reference to where you received that money?

A. No, sir.

Q. Did you give a note to secure Mr. Wells that money?

A. My recollection is that I did not at that time.

Q. Did you pay him any interest on that money?

A. No, sir.

Q. After you proved up, what did you do with the

(Testimony of Dean West.)

receipt they gave you at the land office for the money you paid in?

A. I think I turned it over to Mr. Wells.

Q. Do you remember how long after it was that you proved up? Was it the same day, or later that you turned over the receipt?

A. I couldn't say—it might have been the same, and it might have been a day or so later; I couldn't tell you.

Q. You have sold this land, haven't you?

A. Yes, sir.

Q. Whom did you sell it to?

A. I don't recollect the names any more.

Q. Who did you go to see about selling it?

A. I went to Mr. Pritchard.

Q. Was that the same day you gave Mr. Wells the receipt?

A. The receipt I got first was only a receipt for my money, and I couldn't dispose of the land until I got my final receipt, which was some time after.

Q. Did you sell it the day you got your final receipt?

A. No, sir; I don't think so; I think it was a day or two after—that is my recollection.

Q. How much did you get for your land?

A. My recollection is, I got \$250.

Q. Who paid you this \$250?

A. Mr. Pritchard.

Q. Was Mr. Wells with you when you sold it to Mr. Pritchard?

A. He came in shortly after I got to Mr. Prit-

(Testimony of Dean West.)

chard's office, me and my wife both at Mr. Pritchard's office, and when I went in Mr. Pritchard said he had a party that wanted to buy the land, and that they were willing to give me what I expected to get out of it, \$250.

Q. Did you make a deed to it that day?

A. Yes, sir.

Q. Was the deed prepared when you went there?

A. I couldn't say as to that.

Q. Did your wife take up a claim?

A. Yes, sir.

Q. Did she sell hers the same day you sold yours?

A. My recollection is, the same day.

Q. How many times had you met Pritchard, before that day?

A. Well, sir, I couldn't say that ever I met the gentleman at all, that is to know him, or talk to him before that.

Q. Had you any conversation with him about purchasing this land before that day?

A. No, sir.

Q. Who told you to see Mr. Pritchard?

A. I think Mr. Wells told me.

Q. This Mr. Wells is John I. Wells?

A. Yes, sir.

Q. Did you ever take up but the one timber and stone claim?

A. No, sir.

Q. Did you ever make more than the one deed in Pritchard's office?

A. Some time after—I couldn't tell you how long—I was asked to sign another deed, and de-

(Testimony of Dean West.)

stroyed the one I gave first.

Q. Now, can you fix the date of the first deed you made with reference to the date you got your final receipt?

A. No, sir, I could not. As I say, it seems to me it was the day after, and it might have been the same afternoon, and it might have been two days.

Q. It was within a day or two after you got your final receipt?

A. That is my recollection, the first deed we gave.

Q. Did you give John I. Wells his \$410 back?

A. Why, it wasn't in my hands at all, but John I. Wells was there to get his money.

Q. From whom? A. From Mr. Pritchard.

Q. Do you know whether he got it or not?

A. I couldn't say as to that; I know he was there and come in just after my wife and me.

Q. But all the money you saw with reference to the transaction was \$250?

A. My wife and me got our money at the same time.

Q. That is \$250 each? A. Yes, sir.

Q. And that is all?

A. I had done some errands for Mr. Wells and he paid me the same day, my recollection is, somewhere in the neighborhood of \$50.

Q. What were these errands?

A. Well, sir, he saw me on the street one day, and he said, "Dean, are you busy"? And I said, "Not particularly"; he said he would like to have me call at his office and he would like to have me do some

(Testimony of Dean West.)

errands for him, and I did, and he gave me, my recollection is, the money for four to prove up with, and told me to go around and give the money to different ones.

Q. Do you remember who any of them were?

A. Well, Maggie Pearson was one.

Q. How much did he give you for Maggie Pearson?

A. My recollection is, in the neighborhood of \$412.50, or \$415, for each one.

Q. Do you remember who the other one was?

A. I don't mind who was the first ones I done business with.

Q. How many people that you remember did you distribute money to prove up with?

Mr. FRASER.—The defendants object as incompetent, irrelevant, and immaterial, and not tending to prove any of the issues made by the pleadings.

A. I gave the money to Maggie Pearson, and, I think, to Mrs. Lee—she is married to somebody else now, but she was a widow, or had a divorce from her husband at that time; I couldn't say—it was old man Lee's wife at one time. It is hard for me to remember names; some lady, she ain't here now, I believe Mrs. Briggs, it strikes me that is one of the parties; and Henry Louen and his wife, and Mr. Burns, I think I furnished the money to him.

Q. Louis K. Burns, who was just in here?

A. Yes, sir; I didn't give it to him either; I went to his house and he wasn't there, and I give the money to his wife and told her it was for Mr. Burns.

(Testimony of Dean West.)

Q. Did you leave any for her? A. No, sir.

Q. Do you remember any others, whose names, perhaps, you can't recall?

A. Not at this present time; I was just studying to see; there was a man by the name of Rice, I think I gave the money to him. I don't recollect now any more; I can't bring the mind just now any others.

Q. At whose instance did you speak to them?

Mr. FRASER.—Objected to as incompetent, irrelevant and immaterial.

A. My partner in the mining business, a man by the name of Charlie Nelson was living with me at the time, and he said to me that Mr. Downs and Mr. Wells are offering \$5 for every one he could get to locate timber and pay them \$25 for location; we could get \$5 out of it, and he said if I could help him out on it he would divide up with me.

Q. What was the statement made that you were to tell these people?

Mr. FRASER.—Objected to as incompetent, irrelevant, immaterial and hearsay evidence.

A. If they paid their own location and their expenses up there, and for filing, there was \$250 in it for them, and if they didn't have the money they could find it when they wanted to prove up at John Well's office.

Q. And is that what you told the various people?

Mr. FRASER.—Objected to as incompetent, irrelevant, immaterial and hearsay evidence.

A. Something on them lines.

Q. Did you tell Mr. Louis Burns something sim-

(Testimony of Dean West.)

ilar to that? A. Yes, sir; I think I did.

Q. And did you ever get paid the money for, and did you ever get any persons to locate under agreement or arrangement?

A. Yes, sir; I got several to go.

Q. Name, who they were.

A. Well, William Pearson and wife, and, I think, Sam Gregg and wife; I think Mr. Burns went on my say so, and also old man Rice, we call him, Henry Rice, and a nephew of mine by the name of Louen and his wife; maybe some others, I don't bring to mind just now.

Q. Did you ever get paid any money for locating these people?

A. Mr. Nelson gave me \$10 out of what he got for locating them; that is all I ever got out of it.

Q. Did Wells tell you at any time whose money it was he was using? A. No, sir.

Mr. GORDON.—Will you take the witness with the understanding that I can recall him?

Mr. BUNDY.—You can recall him without any understanding.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. West, you were not engaged in business with Wells or Downs? A. No, sir.

Q. Or engaged in any business with ex-Governor Steunenberg? A. No, sir.

Q. Don't know any of the officers or agents of the Barber Lumber Company, I suppose?

A. No, sir.

(Testimony of Dean West.)

Q. Never did? A. No, sir.

Q. Never had any business relations with them?

A. No, sir.

Q. Never bought or sold any land?

A. No, sir.

Q. Or wrote any letters to them?

A. No, sir.

Q. Never received any letters from them?

A. No, sir.

Q. And have not now and never had any connection with them at all? A. No, sir.

Q. Samuel Dye, your son in law?

A. My brother in law.

Q. And he first suggested to you the advisability of making a timber and stone entry?

A. Yes, sir.

Q. Did he suggest that you make it for somebody else or for your own benefit?

A. My own benefit.

Q. At or about that time the lands in the Boise Basin had been recently opened for entry, had they not?

A. I don't know whether there was any ahead of us at that time.

Q. It was common talk that the lands in the Basin had been opened? A. Yes, sir.

Q. And there were a number of people here engaged in the business of cruising and locating people on this land? A. Yes, sir.

Q. Among others was a Mr. Snow?

A. Mr. Snow and Mr. Downs, I think.

(Testimony of Dean West.)

Q. He was generally reputed here to be a locator and cruiser, was he not? A. Yes, sir.

Q. And also Mr. Downs? A. Yes, sir.

Q. And the business of a locator or cruiser, was to go onto the lands and estimate the timber on each quarter section and then for a consideration take people who desired to exercise their right and locate them upon the more valuable lands?

A. Yes, sir.

Q. Now, then, when your brother in law, Mr. Dye, suggested that you exercise your right as a citizen under the Timber and Stone Act, you say it was for your own benefit? A. Yes, sir.

Q. No talk between you and Mr. Dye that you were going to locate that for somebody else?

A. No, sir, not a word.

Q. This talk or suggestion that there was \$250 in it was what you understood was the profit which you could sell it for over and above what it would cost you?

A. That was the understanding; I don't know who it came from.

Q. Your understanding, Mr. West, was that, that was the market price for lands, and that you could buy it from the Government at about \$250 less than the going market price in this town at that time for 160 acres?

A. Yes, sir, I understood it this way, that over and above what we had to pay the Government and our expenses we was to clear \$250.

Q. Nobody promised to pay you \$250, and you

(Testimony of Dean West.)

didn't promise to sell? A. No, sir.

Q. In fact there was no talk of your selling, or of anyone buying, but Mr. Dye told you that the market price would amount to about \$250 more than the expenses and the Government price?

A. Yes, sir.

Q. You say you went up the next day?

A. The next morning. They had a load made up and he come down to me.

Q. In that load was Mr. Snow and Mr. Downs?

A. That load was Samuel Dye and his son, and John Keene and myself.

Q. Where did you get the rig you went up with?

A. We hired it at the livery barn.

Q. Who paid for it? A. We did, we four.

Q. And did Mr. Downs locate you?

A. Yes, sir.

Q. And did you each pay him something for locating you?

A. We had to pay him \$25, each one for locating.

Q. That, of course, was your own money?

A. Yes, sir, that was my own money.

Q. It wasn't an advancement?

A. No, sir.

Q. After your land had been pointed out to you and you came back to Boise you, in due course, went to the land office and made filing?

A. Yes, sir.

Q. Now, Mr. West, at the time you made this filing, by which I mean your first application, in the local land office here, had anybody, Wells, Downs, or

(Testimony of Dean West.)

anybody else ever asked you to sell your land?

A. No, sir.

Q. Had you offered to sell to anybody at that time? A. No, sir.

Q. Was there any agreement, express or implied, in writing or verbal, at that time that you would sell this land? A. No, sir.

Q. Was there any such agreement, in writing or otherwise, by which you agreed to sell, promised to sell the timber on the land?

A. No, sir, not at that time.

Q. Then at the time you made this first application you were absolutely unencumbered by any promise of any kind to anybody?

A. Yes, sir.

Q. And after making that application was there, was it your intention, in due course, to prove up, and sell it to whomsoever would pay you the best price for it? A. Yes, sir.

Q. And were you free from agreement to sell that land or timber to anybody? A. Yes, sir.

Q. Mr. Wells, I think you testified, hadn't spoken to you about buying it?

A. No, sir, never said anything to me about it.

Q. Now, I think you said you actually paid the \$25 locating fee to John I. Wells?

A. That is my recollection.

Q. Do you recall how you came to pay it to him rather than to Mr. Downs?

A. Mr. Downs didn't come back with us. My recollection is that my brother in law had a note

(Testimony of Dean West.)

from Mr. Downs, and possibly from Mr. Snow to Mr. Wells that enclosed the numbers of this land.

Q. And probably directed him to collect the locating fee? A. Probably.

Q. You paid that to Mr. Wells after you made your original application? A. Yes, sir.

Q. You still and subsequent to the time you made your original application, you were still paying out money yourself to perfect this title?

A. Yes, sir.

Q. Now, in due course of time you advertised, of course, did you?

A. No, I didn't advertise.

Q. I mean after you made your application; you have to advertise a certain length of time.

A. Yes, it was advertised in some paper.

Q. When the day came you made your final proof and paid into the land office your \$412, or whatever it was? A. Yes, sir.

Q. Then, as I understand it, your final receipt was not issued to you at that time?

A. No, sir.

Q. But a receipt for your money was given to you? A. Yes, sir.

Q. And you took that receipt for your money, as I understand it, and gave it to Mr. Wells?

A. Yes, sir.

Q. Did you give that to Mr. Wells and did he receive it from you as some evidence and some security for some money he had advanced to you for proving up?

(Testimony of Dean West.)

A. When I made the final proof I got the money from Mr. Wells, and when I got this paper he suggested that I leave it with him, and he would put it in a safe.

Q. But at the time you left it with him had he made any proposition to buy your land of you?

A. No, sir.

Q. Had you made any proposition to sell it to him? A. Not to him.

Q. Had there been any talk at that time about selling it to any particular person?

A. I don't think there had been at that time.

Q. Mr. Wells took your receipt for the money and put it in his safe and held it, as you understood it, as security for the money he had advanced you?

A. He said, "Dean you had better leave that receipt with me, and I will it put it in the safe, and when you want to get your final proof, come to me and get it," and I just did it.

Q. It wasn't understood between you at that time, that Mr. Wells had bought your land, was it?

A. No.

Q. In due course of time, two or three months afterwards, I think, your final receipt was issued to you? A. Some time afterwards.

Q. After it was issued to you, I think you said you saw Mr. Wells and he told you that L. M. Pritchard was buying land, did he not?

A. Yes, sir.

Q. And suggested that if you wanted to sell, you should go to Mr. Pritchard's office?

(Testimony of Dean West.)

A. Yes, sir.

Q. And you did go up to Pritchard's office?

A. Yes, sir.

Q. Up to that time, the time you made your final proof, had anybody offered to buy, or had you offered to sell that land? A. No, sir.

Q. At the time you stepped into Mr. Pritchard's office, were you absolutely unencumbered, by verbal agreement or otherwise, which would obligate you to sell that to him or any other person?

A. In one sense I might consider myself under obligation to sell it to the parties that Mr. Wells and Mr. Downs—

Q. And if anybody had paid you more than Mr. Pritchard was willing to pay you, you were at liberty to sell it? A. Yes, sir, I think so.

Q. The day you went into this land office, and made application to buy that land, did you make that application for your sole benefit?

A. Yes, sir, there was no one at that time that I knew of who deserved or needed it more than I did, and I was doing it to make a few dollars.

Q. At that time did any firm or corporation, or person have any lien or interest in the land you were then applying to purchase? A. No, sir.

Q. Or the timber on it? A. No, sir.

Q. Now, referring to the part of the evidence in which you say you performed some service or errands for Mr. Wells, in the way of taking some money to various people, did he give you this money in packages, or was it all together?

(Testimony of Dean West.)

A. It was all together as I recollect it, sometimes it was in bills, and sometimes not.

Q. You didn't take it all the same day?

A. Different times, I think.

Q. Did you take in each instance a promissory note for the people to sign?

A. In a few instances; I don't recollect whether it was a promissory note or just a receipt for the money; in some instances I didn't at all.

Q. Your understanding was that Mr. Wells, either for himself or someone else, was making an advancement for these people to prove up?

A. I suppose that was it.

Q. You have testified that your partner, Mr. Nelson, informed you that Downs was paying \$5 to anyone who would send him a prospective entryman.

A. Yes, sir, him and Mr. Wells I think I said.

Q. They were charging \$25, and locating each entryman?

A. Yes, sir.

Q. And they would give to Mr. Nelson \$5 out of their fee for all the people he would send to them who employed them to locate them?

A. Yes, sir.

Q. That was what you understood the \$25 to be paid for?

A. For locating.

Q. And anybody you or Mr. Nelson would send to them, if that person employed them to locate, they would allow that person \$5?

A. Yes, sir.

Q. And Mr. Nelson told you that he would divide that with you?

A. Yes, sir.

Q. And you spoke to some of your neighbors and

(Testimony of Dean West.)

relatives? A. Yes, sir.

Q. And in each instance, if they desired to exercise their rights, they would have to pay \$25 locating fee? A. Yes, sir.

Q. They would have to pay the expenses of the Government and they could make \$250 out of it?

A. That is my recollection.

Q. Did you tell any of these people, or ask them to enter the land for anyone other than themselves?

A. No, sir.

Q. Did any of these people enter any of those lands for Wells or Downs, or for anybody else except themselves? A. No, sir.

Q. With reference to this new deed that you say you executed, a deed in Mr. Pritchard's office, on the day or very soon after your final receipt was issued and then some time afterwards you were requested to execute another deed?

A. That is my recollection.

Q. Don't you recollect that in the first deed the consideration named was very largely in excess of the true consideration? A. Yes, sir.

Q. I think it was \$2,000 or something like that?

A. I couldn't say as to that.

Q. You were told at that time that the object of making the new deed was to correct the excessive consideration named in the first?

A. I don't recollect what was said was the reason why, but they wanted to know if I wouldn't come up and sign up a new deed, and the old one would be destroyed.

(Testimony of Dean West.)

Q. Don't you recall that the first deed contained an excessive consideration, and the second deed contained the actual consideration?

A. I couldn't say as to that now.

Mr. BUNDY.—I think there were a number of deeds found to be in that condition and they changed them.

Mr. KEIGWIN.—We reserve the right to introduce the entry papers and patent and deed to this witness.

At this time court adjourned until 10 o'clock A. M., Thursday, February 4th, 1909.

Court met pursuant to adjournment, at 10 o'clock A. M., February 4th, 1909, all parties being present in court, at which time the following proceedings were had and the following testimony given, to wit:

[Testimony of Louisa B. West, on Behalf of the Government.]

LOUISA B. WEST, being first duly sworn by the examiner, testified on behalf of the complainant as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. West, do you remember having made an entry for land under the Timber and Stone Act in 1901?

A. Yes, sir.

Q. Do you remember filing an original paper in the land office?

A. Yes, sir.

Q. I will ask you if that is the paper you filed, and if that is your signature (showing witness paper)?

A. Yes, sir, that is.

(Testimony of Louisa B. West.)

Q. I will ask you if that is your signature (showing witness another paper)? A. Yes, sir.

Q. Who was the first person that spoke to you about taking up this land?

A. It was my brother, Samuel Dye.

Q. Do you remember what he said to you?

A. I can't—he said something about a timber claim, but I couldn't just tell you how it was.

Q. As near as you can remember, what was said, what induced you to take up this claim?

Mr. BUNDY.—The defendants object as incompetent, irrelevant and immaterial, and hearsay evidence.

A. I can't answer it; my husband done all that business for me that he could. It has been so long, too, that I can't remember everything about it.

Q. Did you go up to look at this claim?

A. Yes, sir, I did.

Q. Did you go with anyone? A. Yes, sir.

Q. Who was among the party?

A. There was six of us. There was Mr. Nevills and Gus Link and his wife and Charles Nelson, and a Mr. Snow.

Q. Do you remember who located you?

A. It was Mr. Snow, I believe; that is the man that went up with us.

Q. Did you have to pay him anything to locate you? A. I did, but Mr. West tended to that.

Q. You didn't pay yourself? If it was paid it was paid by Mr. West?

A. No, he paid it for me and done all he could

(Testimony of Louisa B. West.)

as far as he could.

Q. What did you expect to do with that land when you made that trip?

A. Well, I expected to keep it until I could sell it.

Q. Did you have any one in mind to sell it to at that time? A. No, sir, I did not.

Q. Now, when you went to prove up, where did you get the money with which to prove up?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and not responsive to the pleadings.

Q. Do you know where Mr. West got it?

A. I do not.

Q. After you proved up did anybody speak with you about purchasing this property?

A. No, sir.

Q. Have you it now or have you sold it?

A. I sold it.

Q. Who did you sell it to?

A. I couldn't tell you. Mr. West fixed everything for me.

Q. Where did you go to sell it?

A. I went in Mr. Pritchard's office.

Q. Who was there on that occasion?

A. There was nobody there that I seen, only Mr. Pritchard and Mr. West.

Q. How much money was paid you that day?

A. Well, sir, I can't remember—I couldn't tell you.

Q. About how much?

(Testimony of Louisa B. West.)

A. I couldn't tell you just the amount; I think it was something over \$200.

Q. And who gave you that money?

A. Mr. Pritchard did.

Q. Did you make a deed there at that time?

A. There was a deed that I signed there; he fixed the deed when I was in there.

Q. Do you remember the day that you made your final proof at the land office?

A. Well, I can't. I think it was some time in January—I couldn't for sure—I think somewheres about the 27th or 28th of—I ain't sure; it has been so long that I forget all about that.

Q. How long after that was it you went to Mr. Pritchard's office to make the deed?

A. It must have been nearly nine months or six months; it was in August and that was in January some time.

Q. Did you go there to make a second deed?

A. I did.

Q. How long after you made the first deed was that?

A. I can't remember that.

Q. About how long?

A. I couldn't tell you—I couldn't set no time; it was quite awhile, I think—I couldn't tell you that.

Q. Was it a month or two months or six months?

A. I couldn't tell you the right time.

Q. Do you know why you were asked to make a second deed?

A. No, sir, I couldn't tell you why.

Q. Do you know the names of the persons that

(Testimony of Louisa B. West.)

you conveyed this property to?

A. No, I can't remember that. My husband tended to that, and whatever he said I sanctioned.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Louisa B. West, dated November 1, 1901, and the testimony of claimant, dated January 29, 1902, the cross-examination of the claimant, and the final receipt and final certificate, dated July 18, 1902. The description of the land is, northwest quarter of section 23, township 7 north of range 5 east, Boise meridian, and ask to have them marked as exhibits.

(Papers marked as Exhibits 9A, 9B, 9C, 9D, and 9E.)

Mr. FRASER.—The defendants object to their introduction for the reason that they are incompetent, irrelevant and immaterial, no foundation having been laid for the introduction of the same, and the testimony of the witness shows that the entry was legal, and no violation of the law has been shown in the entry of this particular tract of land, and doesn't tend to prove any of the allegations of the bill.

Mr. GORDON. (Continuing examination.) Mrs. West, I will ask you how you came to go to Mr. Pritchard's office on that occasion?

A. Mr. West told me to go.

Q. And when was it understood that you were to get that \$200?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, as to what was understood.

(Testimony of Louisa B. West.)

Q. (Repeated.) When was it understood that you were to get the \$200 for this property?

A. When I sold my land.

Q. Had you any understanding of that before that time?

A. No, sir, I had made no arrangements whatever.

Q. You went up there and he offered you the \$200 and you took it?

A. And signed the deed and took the money then.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. West, at the time your brother spoke to you about entering this land did he ask you to enter it for anybody except yourself?

A. No, sir, he did not.

Q. Did he simply say to you that if you wanted to enter the land there would be a chance to sell it, so that you would make a profit on it?

A. I believe it was something of that kind, but I don't remember; that is the impression I have.

Q. When did you make the entry for whose benefit did you make it?

A. For my own.

Q. At that time had you had any talk with your husband or anybody else by which you had agreed to sell this land to anybody?

A. No, sir, I had not.

Q. At the time you made your final proof?

A. No, sir, I had not until I made my final proof.

Q. Had anybody talked to you relative to selling either the land or the timber on the land?

(Testimony of Louisa B. West.)

A. Nothing about selling it.

Q. When you went up to Pritchard's office after you made final proof, you say your husband told you to go up? A. He told me to go up.

Q. Did he tell you that Pritchard was buying land?

A. I can't tell you the particulars of it, but that is the substance of it.

Q. When you went up there what did you go for?

A. To sell my land to Pritchard.

Q. Had you had any negotiations before that?

A. I never did with anyone.

Q. And this was after you made final proof?

A. Yes, sir.

Q. Up to that time were you at liberty to sell it to anybody that would pay you the most?

A. I supposed I was.

Q. You hadn't made any promise to sell it to anybody else?

A. No, sir, my husband made all arrangements.

Q. You understood you sold this land for enough to pay back some loan and \$250 besides?

A. I tell you my husband made the arrangements; that is all I know.

Q. All you know about the \$250 is that that was what Mr. Pritchard gave you? A. Yes, sir.

Q. And the deed was made pursuant to some arrangements your husband had made with Mr. Pritchard? A. Yes, sir.

(Witness excused.)

Mr. FRASER.—At this time counsel for the de-

fendants move to strike out all the testimony of this witness, together with the exhibits introduced in connection therewith, for the reason that it is all incompetent, irrelevant and immaterial, and does not tend to prove any of the allegations of the bill, and does not tend to prove any violation of any law of the United States or show any fraud in the acquisition of the title to this particular tract of land.

Mr. KEIGWIN.—Counsel for the complainant repeat their statement formerly made in response to the same motion.

[Testimony of Charles W. Ballentine, on Behalf of the Government.]

CHARLES W. BALLENTINE, being first duly sworn by the examiner, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles W. Ballentine?

A. Yes, sir.

Q. Where do you reside, Mr. Ballentine?

A. Boise.

Q. How long have you lived in Boise?

A. Eighteen years past.

Q. Did you make a timber and stone filing in 1901?

A. Yes, sir, I believe that is the date.

Q. Did you ever make more than the one filing?

A. No, sir.

Q. I will ask you, Mr. Ballentine, if that is your signature to the sworn statement timber and stone

(Testimony of Charles W. Ballentine.)

entry (showing witness paper) ?

A. Yes, sir.

Q. Is that your signature to the testimony you gave on final proof (showing witness another paper) ?

A. Yes.

Q. Who first spoke with you about taking up the claim under the timber and stone act ?

A. A man by the name of Nelson, John Nelson, I believe.

Mr. BUNDY.—John Nelson ?

A. Yes, that is what I always knew him by.

Mr. GORDON. (Continuing.) How long had you known Mr. Nelson ?

A. I think, three, four or five years, somewhere along there ; I knew him quite a while.

Q. What did Mr. Nelson say to you about taking up one of those claims ?

A. We was down on the street one evening and we was just talking about daily life, the daily duties of life and different work, and he wanted to know if I would like to make an easy piece of money, some easy money, and of course I told him yes, if it was alright ; I didn't know what he had reference to, and he said he would see me in a day or so.

Q. Did he see you in a day or two ?

A. He saw me in a day or so and told me what it was—take up a piece of timber land.

Q. Did he tell you where the timber land was ?

A. I don't remember exactly where it was—I don't remember he told me exactly where it was ; it

(Testimony of Charles W. Ballentine.)

was back here towards one of these placer mining towns.

Q. Did he tell you how much this easy money was?

A. Yes, between two and three hundred dollars, somewhere along there.

Q. Well, what was said or done after that?

A. In a day or so he made me acquainted with a man by the name of Snow, Henry A. Snow, and we got together, three or four of us.

Q. Do you remember who the three or four were?

A. Why, Snow was one, Mr. Hollister and his wife.

Q. What Hollister?

A. J. M., Joe Hollister, and another man, I don't know who he was.

Q. What arrangements were made for you to get together, that you know of?

A. I don't just remember; Mr. Snow and Mr. Nelson was getting up a crowd to go out.

Q. And what were you to do to make this easy money?

Mr. BUNDY.—Counsel for the defendants objects as incompetent, irrelevant and immaterial, and asking the witness to testify to a conclusion rather than a conversation, if any.

A. Why, we was to take up a timber claim.

Mr. BUNDY.—Give the conversation.

A. I was to take up a timber claim.

Mr. GORDON.—What were you to do with it?

Mr. BUNDY.—Same objection as last above.

(Testimony of Charles W. Ballentine.)

Q. Who was to direct the selling of it?

Mr. BUNDY.—Counsel for the defendants objects as incompetent, irrelevant and immaterial, and not asking for a conversation, and asking for a conclusion of the witness.

A. I don't know, nobody was to tell me who I was to sell it to. Mr. Nelson said there would be somebody to buy it.

Q. Was it your understanding that you were to turn this over to some person Mr. Nelson would suggest, to make this two or three hundred dollars?

Mr. BUNDY.—Counsel for the defendants object as incompetent, irrelevant and immaterial, and asking the witness to testify to a conclusion.

A. There was nothing said about who I was to turn it over to. Mr. Nelson didn't ask me, didn't tell me I was to turn it over to somebody he was to suggest.

Q. What was your understanding?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and asking the witness to testify to a conclusion, and calling for the understanding of the witness rather than a fact.

A. My understanding was that I was to take it up and that would be tended to later on.

Q. Did you understand that these people were getting people to take up land for some persons?

Mr. BUNDY.—Same objection as last above made.

A. Well, I knew after Mr. Nelson spoke to me that there was a number of people taking up land; I didn't know who they was taking it up for.

(Testimony of Charles W. Ballentine.)

Q. What was your understanding what you were to do with yours?

A. I was to turn it over and make my between two or three hundred dollars out of it.

Q. And you were to turn it over to somebody that Nelson said or somebody that Nelson was working for?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and asking for a conclusion of the witness, and calling for the witnesses understanding rather than a fact, also as leading and suggestive.

A. I would, yes, sir.

Q. Then you knew that your filing was to be taken up for some one else, and all you were to get out of it was between two and three hundred dollars?

Mr. BUNDY.—Same objection as last above made.

A. Yes, sir.

Q. Did you pay a locating fee?

A. Yes, sir.

Q. How much? A. Twenty-five dollars.

Q. Who did you pay that to?

A. I don't remember whether I paid it to Snow or Nelson, I paid it to one of them.

Q. When you went up to take up this claim, who located you?

A. Mr. Snow and Mr. Nelson, and Pat Downs was out on the land, went out with Mr. Snow.

Q. Did you see or talk with anybody else before you started? A. How do you mean?

Q. About this property? A. No.

Q. Do you remember who made out these papers

(Testimony of Charles W. Ballentine.)

for you?

A. I don't remember, I am not positive who made them out.

Q. I will ask you how many pieces of land were you shown when you got there, how many sections, one or more?

A. I saw several, but I was showed one quarter section.

Q. What I am trying to get at is, were you shown a number and asked which you would rather have, or were you shown one and told that that was yours?

A. I was showed one and told that that was mine.

Q. Were you given a description of that land there? A. No, I was given it next morning.

Q. Who gave you that description?

A. Mr. Snow.

Q. Where? A. Down in Boise.

Q. Who went to the land office with you?

A. I don't remember.

Q. Now, after you made your filing, did you see or talk with anyone about making your final proof between that the time you made your proof?

A. Not until about the time I proved up.

Q. Well, who did you see then?

A. I seen Mr. Downs.

Q. What did Mr. Downs have to say about it; did you go to see him, or did he come to see you?

A. I had met Mr. Downs at the location, when they located me, and this was in the winter some time, when I was to prove up, and he had come down town, and I met him on the street, and Mr. Nelson

(Testimony of Charles W. Ballentine.)

had gone, and Snow had gone, and I didn't know of any of the rest to look to, so I spoke to Mr. Downs.

Q. And what did you say to him?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, hearsay evidence.

A. I asked him what he was going to do about the timber land?

Q. What did he say?

Mr. BUNDY.—Same objection as last above.

A. He didn't know for awhile, he didn't seem to want to know much about it for awhile, said it might come out all right, but didn't give me no satisfaction.

Q. Where did you get the money to prove up with?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. I got it at Mr. Wells' office.

Q. Which Mr. Wells? A. John I. Wells.

Q. Was that the first time you had seen Mr. Wells concerning this property?

A. No, I guess I'd talked to him about it probably a month, maybe somewhere along in there—I don't know exactly the time.

Q. Did you know where you were going to get the money to prove up with when you made your original filing, or before?

A. I could have got the money of my own; I had the money of my own, but outside of that I didn't know where the money was coming from.

Q. When were you first told that you could get the money from Mr. Wells to prove up with?

(Testimony of Charles W. Ballentine.)

A. Probably just a few days before time to prove up.

Q. And who told you that?

A. I am not sure whether it was Mr. Downs or Wells.

Q. Well, you then went to Mr. Wells' office to get this money? A. Yes, sir.

Q. What was said when you went there to get it?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and hearsay evidence.

A. Well, there wasn't much said, I made my wants known, and I got the money.

Q. How much did you get?

A. Oh, I got three or four hundred dollars, somewhere along there, I put in a little myself.

Q. Did you give a note for it?

A. No, sir.

Q. Did you give a duebill?

A. Didn't give anything.

Q. Pay any interest on it? A. No, sir.

Q. Was there any understanding when you were to pay it back, was anything said about it on that occasion? A. No, sir.

Q. Had you ever met John I. Wells before you had spoken to Nelson about taking up this claim?

A. No, sir.

Q. You say this was the day before you went to the land office to make your proof, that you got this money from Wells, or about that time?

A. I went to him several days before I proved up, but when I got the money—I don't know whether

(Testimony of Charles W. Ballentine.)

I proved up the same day I got the money—it might have been the same day, or in a day or so.

Q. Was anything said to you on that occasion by Mr. Wells as to what you should say when asked at the land office where you got that money?

Mr. BUNDY.—Same objection as last above.

A. It was to be my own money.

Q. He told you to say that it was your own money.

A. Yes, sir.

Q. How did he pay you this money? Did he give it to you in cash? A. Yes, sir.

Q. Where did he have the money, did he have it in his pocket, in his drawer, or where did he get the money? A. I got the money in his office.

Q. Whereabouts in his office?

A. Oh, he left some of it on the table for me to pick up, and I got it on the table; just scattered around, I don't remember where exactly.

Q. Was there anywhere else in the room you got this money? (Witness pauses.)

A. It was just scattered around the office.

Q. Was any of it on the floor?

A. Yes, might have been a little of it on the floor.

Q. When you went to the land office to prove up, did they give you a receipt for the money?

A. Yes, sir.

Q. What did you do with that receipt?

A. I had that receipt quite a long time, but I don't remember who I gave that receipt to; I gave it to somebody for a length of time, but I had it in my possession, I think, most of the time.

(Testimony of Charles W. Ballentine.)

Q. You gave the receipt to someone, and then when you went to get your final receipt, they gave it back to you, did they? A. Yes, sir.

Q. So that you could take it up to the land office?

A. Yes, sir.

Q. Was your claim held up for a time?

A. Yes, sir.

Q. When this suspension was released, who advised you of that? When you were advised that the plan would go through, when the time came that the claim would go through, who advised you of that?

A. I don't just remember now, whether Mr. Downs or Mr. Wells spoke to me, one of them.

Q. How long after that was it that you made arrangements to dispose of this land?

A. How long after I got final receipt?

Q. Yes.

A. I don't remember exactly, a day or so probably, a week or so, it might have been two weeks probably, just a short time.

Q. Where did you go to sell it?

A. Went to Mr. Kinkaid's office.

Q. Had you ever met Mr. Kinkaid before?

A. I don't remember that I had, possibly had, don't remember though of ever meeting him before.

Q. How was it you went to Mr. Kinkaid's office?

A. Mr. Wells directed me there.

Q. When you went there, what was said about the purchase of this land?

A. Wasn't much said about it—just done business.

(Testimony of Charles W. Ballentine.)

Q. What business did you do there?

A. I don't remember the amount of money I got, between two and three hundred dollars, somewhere along there.

Q. Who was at the office when you went there?

A. Mr. Kinkaid.

Q. Anyone else?

A. Mr. Wells was part of the time; he went out.

Q. Did you get as much money as you expected to get? A. No, sir.

Q. How much money did they give you on that occasion? A. I don't remember exactly.

Q. As near as you can?

A. I don't remember just exactly the amount of money, I believe in the neighborhood of \$300, somewhere along there, all together.

Q. How much more did you expect to get?

Mr. BUNDY.—Objected to as incompetent, irrelevant, and immaterial.

Q. (Repeated.) How much more did you expect to get?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and asking for a conclusion rather than the conversation and facts upon which it is based.

A. I was to get quite a little more than I did get, I don't remember exactly how much.

Mr. BUNDY.—I ask that that answer be stricken out as not based upon the conversation.

Q. How much more?

A. I can't remember exactly, but it was some-

(Testimony of Charles W. Ballentine.)

where between fifty and a hundred dollars, \$75 I was to get more.

Q. Did you sign a paper while you were there in Mr. Pritchard's office?

A. I don't remember whether I did or not.

Q. Did you ever sign a deed?

A. I don't remember that I ever signed a deed; if I did I have no recollection of it.

Q. Did you ever sign in Mr. Pritchard's office a deed or contract in blank and swear to it?

A. I don't remember that I ever did; I signed one in Kinkaid's but I don't remember—

Q. I intended to say Kinkaid's office.

A. I signed an article at Kinkaid's office.

Q. What was that? A. I don't know.

Q. Was it a paper in blank?

A. Yes, sir, it was a blank form, looked to me like a contract of some kind.

Q. Did it have any names in it?

A. I didn't see any.

Mr. FRASER.—Have you got that paper?

The WITNESS.—No.

Mr. FRASER.—Have you got it, Mr. Gordon?

Mr. GORDON.—No, sir.

Mr. BUNDY.—The department has all the deeds.

Mr. GORDON.—I have looked for it, Mr. Bundy.

Mr. FRASER.—We move to strike out the answer of the witness as to the document he signed, as the document is the best evidence, and proper foundation has not been laid for the introduction of secondary evidence.

(Testimony of Charles W. Ballentine.)

Mr. GORDON.—(Continuing.) Was anything said by Mr. Kinkaid why he didn't give you the amount of money that had been agreed, or that you understood you were to get?

Mr. BUNDY.—That is objected to as assuming something not in evidence. There is no evidence here of any agreed amount.

A. He said they had been to quite a bit of expense, and they couldn't stand it.

Mr. GORDON.—We offer in evidence the entry papers of Charles W. Ballentine.

Mr. BUNDY.—You didn't put in evidence the patent of Dean West?

Mr. GORDON.—We didn't have them; you remember I said I had sent for them.

Mr. GORDON.—Included in this are the final receipts and the patent, the lands, northeast quarter, section 7, township 7 north of range 5 east, Boise Meridian. The original application is dated October 29th, 1901, the testimony of claimant is dated January 22d, 1902, the certificates are dated July 16th, 1903. And the patent is dated July 26th, 1904, and the certificate of recordation is dated the 11th of October, 1904.

Mr. FRASER.—Counsel for the defendant object to the introduction of said exhibits, and all of them, for the reason that they are incompetent, irrelevant, and immaterial, no proper foundation having been laid for the introduction of the same, and they do not tend to prove any of the allegations of the bill of complaint; the testimony of the witness shows

(Testimony of Charles W. Ballentine.)

upon its face that at the time of the entry at the land office and his application to purchase the lands no violation of the law has been committed, and no fraud has been shown in said application.

(Ballentine papers marked as exhibits from 10A to 10G inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. What is your business, Mr. Ballentine?

A. Bricklayer.

Q. What was your business in 1901?

A. Common laborer at that time.

Q. How long had you lived in Boise at that time?

A. I guess about ten years; I have been here a little over eighteen.

Q. How long had you known this man Nelson at that time?

A. Probably three or four years.

Q. What was his business?

A. I think he was a common laborer, worked around at different work.

Q. Was he a neighbor of yours?

A. No, sir.

Q. Was he an intimate friend of yours?

A. Just met him—I don't know how I met him or where; I knew him quite awhile.

Q. His name was John Nelson?

A. I always knew him as John.

Q. Do you remember where you had your first talk with him in regard to this timber claim?

A. Yes, sir.

(Testimony of Charles W. Ballentine.)

Q. Where was it?

A. Corner of Eighth and Main Street.

Q. In this city? A. Yes, sir.

Q. State exactly what he said to you?

A. As nigh as I can?

Q. Yes, as near as you can.

A. We was standing on the corner of Eighth and Main Street, and we was talking about different daily duties of life, working different ways, and he wanted to know if I wanted to make some easy money.

Q. Talking about the daily duties of life?

A. Yes, sir, common work, making money and so forth, what we was doing, and he wanted to know if I wanted to make some easy money.

Q. What did he say, his language?

A. That is about as close to it as I can get.

Q. Did he say to you, "do you want to make some easy money"? Was that the language he used?

A. He wanted to know of me if I wanted to make some easy money.

Q. What did he say?

A. He asked me if I wanted to make some easy money.

Q. What did he say about the daily duties of life before you led up to that?

A. I don't remember.

Q. Can't you remember any of the conversation except that about the timber?

A. I remember we was talking something like that.

(Testimony of Charles W. Ballentine.)

Q. What were you talking about?

A. We was talking about work.

Q. What did he say about work, and what did you say?

A. What we was making a day, and so on.

Q. Tell us the language, what he said and what you said.

A. I don't remember.

Q. Can't you give us anything he said?

A. I have answered the question, I told you I can't remember.

Q. Can't remember anything he said about the daily duties of life at all?

A. I can't remember; I remember we was talking something about working, wages, and so on.

Q. How can you remember you were talking about wages if you can't remember what he said?

A. Well, I don't remember—I might have been talking about a dollar a day and I might have been talking about five dollars a day.

Q. Were you talking about five dollars a day?

A. I don't know; we was talking about wages.

Q. What did you say about wages?

A. I don't remember.

Q. What led up to this talk about timber land?

A. Wages.

Q. What was said that suggested timber?

A. I told you that we was talking about wages and labor and working.

Q. What was said, give us the conversation now about this timber, how it led up to it, what he said first about this timber.

(Testimony of Charles W. Ballentine.)

A. He asked me if I wanted to make some easy money.

Q. What did you tell him?

A. I told him, yes.

Q. Was that all the conversation you had at that time about timber?

A. It was in the evening and he didn't say but a word or two that evening about this easy money proposition.

Q. What did he say?

A. He wanted to know if I wanted to make some easy money, and I told him, yes.

Q. Was that all at that time?

A. That was just about all that time, yes.

Q. Well, what else?

A. A day or two after that—I can't remember exactly—he spoke to me again about it, and introduced me to Mr. Snow.

Q. What did he say to you when he spoke to you again about it?

A. He told me then it was timber land.

Q. Tell us what he said, his language, as near as you can.

A. He told me I could make between two and three hundred dollars taking up a timber claim.

Q. Where were you when he told you that?

A. I don't remember exactly; we was down town some place.

Q. Had you ever heard of this timber land proposition before?

A. No, sir, didn't know anything about it what-

(Testimony of Charles W. Ballentine.)

ever.

Q. Didn't know there was such a thing before?

A. I knew there was; I didn't know the particulars.

Q. How long after the first conversation was it that you had this second one?

A. A day or so maybe.

Q. Go on and tell us the full conversation at that time.

A. He told me the second time that I saw him how I was to make this easy money.

Q. Tell us what he said; give us his language as near as you can remember.

A. He told me the second time that we met how I was to make this easy money.

Q. Tell us what he said, his language.

A. I was to take up a timber claim.

Q. Please tell us what he said to you.

A. He told me I was to take up a timber claim; I don't know what else he said.

Q. Give it to us in his language; I want his language, what he said to you and what you said to him.

A. I will tell you what he said as nigh as I can.

Q. Tell us what he said, as nigh as you can.

A. He told me if I would take up a timber claim I could make between two and three hundred dollars taking up a timber claim.

Q. Did he tell you how much it would cost you to locate? A. \$25.

Q. He told you that, did he? A. Yes, sir.

Q. Did he say who you would have to pay that to?

(Testimony of Charles W. Ballentine.)

A. I was to pay it to him or him and the other fellows was working together, there was two or three working together.

Q. Who were the other two or three?

A. A man named Snow was; he introduced me to Snow.

Q. What did he say when he introduced you to Snow?

A. He said, as nigh as I can remember, this is another man that is going to take up a timber claim.

Q. Go on and state further what was said.

A. Then, we made a date, if I remember right, when we was to go out and look at the timber land.

Q. Did he tell you at this time or the first time that you would have to pay \$25 for locating?

A. I don't remember there was anything said about the locating at first.

Q. Then it was the second time he told you about that?

A. I guess that is right.

Q. Did he tell you at that time you would have to make a filing on a timber and stone claim, this second conversation did he tell you you would have to make an entry of timber and stone claim?

A. We would have to take up a timber claim.

Q. Did he say at that time that it would cost you \$25?

A. The second time, yes.

Q. Did he tell you you would have to pay some additional expenses for advertising, or did he mention that?

A. No.

Q. Nothing except the \$25?

A. No.

Q. Did he tell you how you was to get up there?

(Testimony of Charles W. Ballentine.)

A. Yes, was to go up in a rig.

Q. Did you go up in a rig? A. Yes, sir.

Q. Who paid for that rig?

A. We all chipped in and paid for the rig.

Q. Whom do you mean, do you mean all the parties that went up? A. Yes, sir.

Q. You paid your share? A. Yes, sir.

Q. Did Mr. Nelson tell you you would have to pay your share as a part of the expenses?

A. I don't remember that there was anything said about that.

Q. Then, you did go up, Mr. Snow, Mr. and Mrs. Hollister and yourself? A. Yes, sir.

Q. Did Nelson go with you? A. No, sir.

Q. What town did you go to first?

A. I don't remember the towns.

Q. Don't you remember whether it was Pioneer-ville or Centerville?

A. There was two little towns we went to, I don't remember.

Q. Did you stop over night? A. Yes, sir.

Q. Where? A. At Mr. Down's camp.

Q. The next morning you went out and looked at the land? A. Yes, sir.

Q. Did he give you some figures and descriptions of the land? A. Not then, he didn't.

Q. When did he give that to you?

A. Mr. Snow give it to me next morning.

Q. After you got this description what did you do next?

A. I don't remember whether I filed on the land

(Testimony of Charles W. Ballentine.)

then or in a day or so after.

Q. When did you pay the \$25?

A. I don't remember whether before or after I filed.

Q. Who did you pay it to?

A. I paid it to one of them, either Snow or Nelson.

Q. Can't you remember who you paid it to?

A. I paid it to one of them.

Q. Who went with you to the land office?

A. I don't remember.

Q. Who did you have as witnesses?

A. When I filed?

Q. Yes. A. I don't remember.

Q. Now, the day you went to the land office you made a sworn statement, did you not?

A. Yes, sir.

Q. This sworn statement, Mr. Ballentine, seems to be dated October 29, 1901; that is correct, is it not?

A. I believe it is, yes, sir, 1901.

Q. Now, at the time you went to the land office and made this first original application, on October 29, 1901, had you had any talk with anyone by which you had promised or agreed to sell this land to anyone at any time, or the timber upon that land at any time to any person, firm or corporation?

A. Nelson.

Q. You had agreed to sell it to Nelson?

A. I was to get between two and three hundred dollars.

Q. Had you agreed at that time to sell that land

(Testimony of Charles W. Ballentine.)

to Nelson?

A. Hadn't agreed to sell it to Nelson, no sir.

Q. Had you agreed to sell it to anybody, and, if so, who?

A. (After some hesitation.) I didn't make no agreement with Nelson to sell it to Nelson, but it was understood that I was to get between two and three hundred dollars for taking that timber claim up for somebody.

Q. Now, tell us the conversation that you had in which that agreement or understanding was arrived at.

A. To the best of my recollection, Mr. Nelson—I don't know whether he come out—he didn't name nothing, but I was to get—

Q. Never mind what you was to get. Tell us the conversation.

A. (After hesitation.) I don't remember just exactly what was said. It was quite awhile ago; I can't think just exactly what was said, but I was led to believe—

Q. (Interrupting.) We want the conversation.

A. The exact conversation, I couldn't give it.

Q. Then you can't give us the conversation which gave you the understanding you had that you were to get two or three hundred dollars, is that right?

A. I couldn't tell you just exactly what was said that led up to that conversation.

Q. Did you ever have any other conversation with anybody, Nelson or anybody else, relative to what you were to receive for that land, except the one you have

(Testimony of Charles W. Ballentine.)

told us about, when Nelson told you you could get two to three hundred dollars?

A. Never had any talk with anybody that was going to buy it—nobody offered to buy it.

Q. Then, the only conversation you ever had with anybody which led you to believe that you were to get two to three hundred dollars was this first conversation you had with Nelson about easy money?

A. I didn't say so.

Q. Is that a fact? A. No, sir.

Q. What other conversation did you have?

A. After I filed—

Q. (Interrupting.) I am talking about before you filed.

A. You want me to answer the question, do you not?

Q. Yes.

A. After I filed Mr. Nelson dropped down and out—

Q. You mean after your original first filing in the land office, October 29th, after you entered the land in the land office?

A. Mr. Nelson dropped down and out, and I didn't know where the money was coming from unless I used my own money at the time to prove up, so I seen Mr. Downs and Mr. Wells.

Q. Now, that doesn't answer the question. (Question read back to witness by stenographer.)

A. I spoke to Mr. Downs about what I was going to get out of it, and he didn't seem to exactly know—between two and three hundred, somewhere

(Testimony of Charles W. Ballentine.)

along there—and I spoke to Mr. Wells, and he didn't seem to know exactly, thought it was between two and three hundred, somewhere along there.

Q. What did Mr. Wells say to you, and what did you say to him?

A. I don't remember the exact words, but there was something said about the time when we got the money, there was something said about it.

Q. What was said about it?

A. The exact words, I couldn't say.

Q. What was the substance of what he said and you said?

A. I was to get between two and three hundred.

Q. What did he say? We want to find out who told you you were to get that, and how he told you, and what he said.

A. Mr. Wells said I was to get between two and three hundred.

Q. Where did he say that to you?

A. At his office.

Q. When?

A. Just before I proved up, some time before I proved up.

Q. Did you at that time agree to sell it to him?

A. No, I never agreed to sell it to him.

Q. Did he offer to buy it? A. No.

Q. Did you agree to sell it to anybody?

A. No certain person, no.

Q. Did you agree to sell it to anybody?

A. No, no certain person.

Q. Now, Mr. Ballentine—

(Testimony of Charles W. Ballentine.)

A. (Interrupting.) No certain person come to me and asked me if I wanted to sell the claim.

Q. Did anybody, certain person or otherwise, ever offer to buy it from you until after you had made your final proof?

A. Mr. Nelson said he would see that I sold the claim all right, that I would get rid of it all right.

Q. When was it Mr. Nelson told you that?

A. I believe you asked me if Nelson ever offered to buy it from me. Mr. Nelson never offered to buy it from me.

Q. When was this conversation you last told us about?

A. That was before I filed on it.

Q. Now, Mr. Ballentine, Mr. Nelson told you at that time that there were timber claims to be had up there?

A. There was between two and three hundred to make on it.

Q. There was no question but that you could sell it and make between two and three hundred dollars; that was what he told you?

A. Certainly, something of that kind, but Mr. Nelson seemed to leave the impression—

Mr. BUNDY.—(Interrupting.) We don't care about impressions.

Mr. GORDON.—Let him answer the question. Answer the question. I appeal to the Court to have him answer.

Mr. BUNDY.—I will have him answer the question if I stay here all summer.

Mr. GORDON.—In proceedings of this kind he

(Testimony of Charles W. Ballentine.)

has a right to finish his answer, and the Court has a right to say—

The EXAMINER.—I dislike very much to interfere in this examination. Of course you both understand perfectly the position I occupy here and I hope we can get along without any controversy. I think Mr. Bundy will acknowledge that the witness has a right to finish his answer instead of stopping him half way through.

Mr. BUNDY.—I don't make any such acknowledgment.

The EXAMINER.—It is proper for the witness to be careful and answer the question that is put to him by the attorney carefully and honestly; it never hurts anybody to tell the truth, and they can't commence too soon. Answer the question, witness, as briefly as you can, as carefully as you can, and as fully as you can, and I hope Mr. Bundy will permit you to do that, not avoid it. If you really can't recollect, you can say so.

Mr. BUNDY.—That isn't the question, your Honor. I asked this witness a question on cross-examination. He proceeds to say something not at all responsive to my question. I asked this man a certain question. He proceeds to deliver himself of a speech on some other subject not at all responsive to the question.

The EXAMINER.—The witness, I think, will try to answer the question. As I say, I hope we will get along without any controversy.

Mr. BUNDY.—We will get along, your Honor, but

(Testimony of Charles W. Ballentine.)

we will not submit to any sweat-box processes.

Mr. FRASER.—If the Court please, our position is this, as Mr. Bundy states, when we ask a question we want that question answered, not anything else. That is what we are insisting on. This witness all the time is not answering the question.

The EXAMINER.—I have already cautioned the witness carefully about that, and he will undertake to answer the question. Answer the question as directly as is possible under the circumstances, of course, and no other question. I presume the best way is to ask a new question and go right along. We can get all this evidence in, gentlemen, on both sides. We have all the time there is. I want to caution the witness on one little matter. There is no controversy between you and the Barber Company nor between you and the United States, nor between you and these attorneys, and you have a right, and it is perfectly proper for you to answer these questions directly and without any evasion. I don't know that you have tried to evade them at all, but that is what you should do.

The WITNESS.—If the Court please, it has been a long time, it has been eight years since this took place, and I have tried to forget it. I am ashamed of the affair, but now I called into court, and I haven't the gift of language probably to express my thoughts as some men have, but I want to get straight to the point as nigh as I can; I want to answer the question truthfully; I want to tell the whole truth; I want to tell it all to the best of my knowledge.

(Testimony of Charles W. Ballentine.)

The EXAMINER.—Answer the question directly and as briefly as possible.

Q. (By Mr. BUNDY.) You have an understanding with Mr. Gordon here that you are not to be prosecuted in this case, haven't you been assured of that over and over by the Government officials?

A. I don't know as I have.

Q. Don't you know Mr. Ballentine, that Mr. Sharp and Mr. Ruick promised you immunity from any prosecution?

A. They did a long time ago.

Q. You have been promised immunity—

A. (Interrupting.) Just to tell the truth.

Q. They told you that if you would do that, Mr. Gordon, Mr. Ruick, Mr. Sharp or any or either of them? Have you any agreement with any of them?

A. Not with any of them, with nobody.

Q. Now, Mr. Ballentine, I will tell you where you and I are differing in this examination. I will make this statement to you so that we will understand this matter better. You are testifying evidently to what you believe, you are testifying to an impression, you are continually testifying to your understanding of something. Now, that isn't what we want. What we want you to testify to is the negotiations you had and the conversations you had with these different people, and the Court will decide from that.

Mr. KEIGWIN.—I object to the instructions which Mr. Bundy is giving as being utterly incompetent and beyond the duties and scope of counsel examining.

Mr. BUNDY.—We will commence again at the

(Testimony of Charles W. Ballentine.)

beginning, Mr. Balentine, with that assurance. Going back to the first talk you ever had about timber and stone, that was with a man by the name of John Nelson, at the corner of Eighth and Main street, in which, as I understand you testified, he said to you, asked you if you wanted to make some easy money, in substance?

A. Yes, sir.

Q. Now, that was practically all of the conversation so far as timber land was concerned at that time?

A. Yes, sir.

Q. Within a day or two afterwards he again met you, or some time shortly after that, at some point which you now have forgotten, and at that time he said to you that in order to make this easy money you would have to make a timber entry. Is that correct, so far as I have gone?

A. Yes, sir.

Q. And that you would have to go on the land and locate it and pay \$25 for a locating fee?

A. Yes, sir.

Q. That is substantially correct, is it?

A. Yes, sir.

Q. And at that time he introduced you to Mr. Snow, saying to Mr. Snow in your presence, "Here is a man who wants to make a timber entry," or words to that effect. Am I right so far?

A. Yes, sir.

Q. And then you went the next day, was it?

A. In a day or so.

Q. You went up with Mr. Snow and some other gentlemen and ladies, and Mr. Snow located you on

(Testimony of Charles W. Ballentine.)

a piece of land, or Pat Downs did?

A. Mr. Snow and Pat Downs did together.

Q. Then they sent you down a description of the land they had shown you, and Mr. Snow handed that to you here in Boise?

A. Yes, the next day after if I remember.

Q. Then, within a day or two after that you went to the land office and on October 29, 1901, made your first entry or application to purchase from the United States, in the land office here at Boise?

A. Yes, sir.

Q. Now, eliminating anything that may have been done subsequent to that time, have I stated fairly—I show you this paper marked Plaintiff's Exhibit No. 10, headed Timber and Stone Lands Sworn Statement. That is the paper which you filed October 29, 1901, and swore to, is it not?

A. Yes, it is my signature.

Q. Now, eliminating anything that occurred since, after that, have I now stated to you all of the conversations which you have had with anybody who had led you to think you could make two to three hundred dollars by making that entry? Have I stated all the conversations up to that time, with anybody?

A. I hadn't spoken to anybody but Nelson—Nelson to me, rather.

Q. Then, up to that time, up to October 29, 1901, the only talk you had had with anybody which created this impression in your mind that you could make a profit of two to three hundred dollars was the state-

(Testimony of Charles W. Ballentine.)

ment Nelson had made to you at the time you first talked with him, when he told you about this easy money. Is that correct?

A. And the after-talk we had.

Q. I am taking it up to this time, to the date October 29, 1901.

A. He talked to me after the first time he seen me, he is the only man that talked to me. He didn't just ask me if I wanted to make some easy money and say nothing to me after that.

Q. Have you told us all that Nelson ever said to you which created this impression in your mind that you could make two or three hundred dollars by making a timber and stone entry, up to the date of this first filing?

A. If you understand me—he told me these parties would take this timber land; he said some parties will take it; he said that will be all right.

Q. When was this?

A. That was before I filed. It must have been the second time I met him, somewhere after that, before I filed.

Q. I am beginning now to get the conversation.

A. I don't remember whether it was the second or third time I met him he said there would be parties to take the timber land, and I remember talking to him, and said, supposing I didn't want to put my own money in filing, in proving up on this timber land, and he said, that is all right, you will make that much out of it. He said, we will make that all right. He give me to understand leave that to him.

(Testimony of Charles W. Ballentine.)

Q. Did he say that?

A. He said leave that to him.

Q. That was this man John Nelson, who was a laboring man here in Boise, and wasn't engaged in any timber business so far as you knew?

A. No.

Q. Wasn't a locator?

A. He was a locator; he said Mr. Snow and him was locating people up there.

Q. Did you understand that he was engaged in locating people? A. He told me he was, yes.

Q. And he was getting people to locate up there?

A. Yes, sir.

Q. Now, you have told us all the conversation you had with anybody which created an impression in your mind that you could sell this land at a profit of two or three hundred dollars prior to this time?

A. Yes, sir, Nelson was the only man I ever talked to about it.

Q. Did you, in making your final proof, swear and testify falsely? A. I guess I did.

Q. Did that intentionally, did you? A. No.

Q. It was read over to you, was it not?

A. I believe it was.

Q. You read it over yourself—you can read, can't you?

A. I read, yes, sir, but I didn't read it over.

Q. You knew at the time you made this statement and swore to it that you were under oath, of course?

A. Yes, sir.

Q. And you intended to tell the truth at that time,

(Testimony of Charles W. Ballentine.)

did you not, or did you intend to testify falsely?

A. Why, I understood—

Q. (Interrupting.) You can answer that question by yes or no. Did you intend to testify to the truth or did you intend to testify falsely?

A. No, I put in a little money in the proposition, you understand.

Q. I didn't ask you about that.

A. I wanted to show you that I didn't think I testified falsely.

Q. You intended to testify truthfully, did you?

A. Yes, sir.

Q. And at that time you believed you were testifying truthfully? A. Yes, sir.

Q. And you did not intend to testify to anything that was not strictly true at the time you filed your application? A. No, sir.

Q. In that original application you swore as follows: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was actually and absolutely true, was it? A. Yes, sir.

Q. And at the time you made that original application, on October 29, 1901, you never had made any agreement, directly or indirectly, in any manner or in any way, with any person or persons whomsoever, by which the title you might acquire from the Government of the United States would inure in

(Testimony of Charles W. Ballentine.)

whole or in part to the benefit of any person except yourself, had you?

A. Not unless the agreement or talk with Mr. Nelson.

Q. That wasn't any agreement, was it?

A. There was no written agreement.

Q. It wasn't any verbal agreement?

A. It wasn't any verbal agreement, but I understood—

Q. (Interrupting.) You understood that he thought there was or would be buyers?

A. Yes.

Q. And you hadn't any doubt but that if you entered that land you could sell it?

A. Yes, sir.

Q. And so you entered it with the expectation of selling it and getting more out of it than you would have to pay the Government?

A. Yes, sir.

Q. And you entered it just as you stated in your original application, for your own sole benefit?

A. Yes, sir.

Q. Wasn't anybody else interested in it at all, was there, at that time?

A. Nelson might have been interested—I don't know how much he was interested—I was interested \$300.

Q. You were interested \$300 because you expected to make a profit of that much?

A. Yes, sir.

Q. Mr. Nelson didn't have any interest, di-

(Testimony of Charles W. Ballentine.)

rectly or indirectly, in the profit you might make in that, did he? A. Not in the profit.

Q. Nor in the land?

A. I don't know anything about that.

Q. Now, Mr. Ballentine, you know whether you had agreed to sell that land to Nelson at the time you made this application.

A. I never agreed to sell it to Nelson; I never agreed to sell it to anybody else.

Q. You know whether you had agreed to sell it to any particular person he might represent.

A. He didn't represent anybody—he didn't say he did.

Q. So that the fact is, that at the time you made your application, put in this \$25 to locate it, you did it believing that you could sell that land at a profit of two to three hundred dollars more than it cost you?

A. I believed that if Mr. Nelson would do what he said I would make that.

Q. Mr. Nelson said there would be somebody to buy it? A. Yes, sir.

Q. Is that what you want it understood—that you entered that land because Nelson made you believe you could sell it at a profit?

A. He led me to believe that I could make two or three hundred dollars.

Q. And the two or three hundred you was to get was the profit you expected to make on the deal?

A. Yes, sir.

Q. And is that all you wish to be understood in

(Testimony of Charles W. Ballentine.)

your evidence here?

A. I was to make between two and three hundred dollars out of it.

Q. That was an expectation which Mr. Nelson had created in your mind? A. Yes, sir.

Q. You didn't understand that Mr. Nelson had obligated himself to pay you three hundred dollars for himself or for anybody else, did you?

A. No, but he seemed to be positive that it would be all right.

Q. He was positive somebody would be around to buy it, wasn't that it?

A. He said it would be all right—I would get my money out of it all right enough.

Q. Let's see if we can find out what you do mean. When did you first talk this thing over with any officer of the Government, Mr. Ballentine?

A. O, I think about a year, maybe about six months after I proved up.

Q. Who was that? A. Mr. Sharp.

Q. Was that the time you were promised immunity? A. No, sir.

Q. When was it you next talked to any official of the Government?

A. I talked to Mr. Sharp several different times.

Q. Was it at one of the later talks he promised you immunity?

A. He never did promise me immunity.

Q. Did you have a talk with Mr. Ruick before you went before the grand jury?

A. I believe I did, I wouldn't be positive, it was

(Testimony of Charles W. Ballentine.)

with Ruick or whether it was in the grand jury room.

Q. How many times have you been before the grand jury? A. As I remember, it was twice.

Q. How many times have you been in the sweat-box in the District Attorney's office here?

A. I never was in the sweat-box, I never was sweated.

Mr. KEIGWIN.—Do you know of any personal knowledge of any sweat-box?

Mr. BUNDY.—It is generally known as a sweat-box.

Q. (Continuing.) How many times have you been in the District Attorney's office and queried about this matter?

A. Why, I might have been asked a time or two.

Q. I asked you how many times you have been in there and told this story to the officials of the Government? A. I told it once to Ruick.

Q. Ever tell it to Mr. Gordon here?

A. Not behind closed doors, I didn't.

Q. Did you tell it to him behind open doors?

A. There was other people in there at the time.

The EXAMINER.—Don't avoid the question; just state it right out.

Mr. BUNDY.—I would like to have the record show how he is avoiding the questions.

The EXAMINER.—I will caution him not to avoid it.

Q. How many times have you told Mr. Gordon this story? A. Once, I believe.

(Testimony of Charles W. Ballentine.)

Q. When was that?

A. It was several days ago. He told me just to tell the truth now.

Q. Mr. Gordon told you to tell the truth?

A. He says, "Tell the truth, nothing but the truth, we don't want nothing but the truth, I don't care if they all hear"; that is what he told me.

Q. Who were the other people in there?

A. There was one or two.

Q. And he told them that same thing after he got through; he told them to tell the truth?

A. Yes, sir.

Q. Now, Mr. Ballentine, you have testified here on record and again under oath that it was your understanding when you entered this land that you was to get three hundred out of it, and I have been trying ever since to find out on what you based that. If you will answer the questions directly it won't take very long. Was that expectation of three hundred on your part what you expected to make by the sale of the land after you got title to it?

A. I expected to make between two and three hundred when I sold the land.

Q. When you sold the land?

A. Yes, sir.

Q. How did you expect to make two to three hundred dollars? Was it by way of profit on your investment?

A. Yes, sir.

Q. Did you expect to get two or three hundred out of it in any except by the price for which you would sell it over and above the cost?

(Testimony of Charles W. Ballentine.)

A. I don't know of any other way.

Q. Did you understand from Mr. Nelson that there would be any other way to make any money except by selling it at a profit? A. No.

Q. And it was Mr. Nelson's expressed belief to you that the land would sell for enough to give you that much profit; is that correct? That is, Mr. Nelson told you it would sell for enough in his opinion to give you that much profit?

A. Why, he said I would get that much out of it.

Q. Did you understand at that time that he was expressing a belief that it would be sold for that much, or did you understand from him at that time that he was buying it of you?

A. I understood at that time by his talk, to the best of my recollection, that he would see that I got that much.

Q. By selling the land?

A. By me selling the land; he would see that I got that much.

Q. You didn't sell it to Nelson at all?

A. No, sir.

Q. Never went to Nelson to try to sell it to him?

A. Never could find him.

Q. After you got your final proof you went out hunting for Nelson? A. No.

Q. Before you got your final proof did you go hunting for Nelson?

A. After he went away I asked several parties where he was.

Q. Were you trying to sell it to him?

(Testimony of Charles W. Ballentine.)

A. No.

Q. You knew he wasn't a man of means?

A. I didn't know.

Q. You didn't expect to sell it to Nelson, did you?

A. I wanted to see him; I wanted to see where his man was that was going to buy this land.

Q. And you didn't see Mr. Nelson at all?

A. No, sir.

Q. You finally went to Mr. Kinkaid?

A. I sold it to him, that is, I went to his office to do business.

Q. Kinkaid was a man, as you understand it, engaged in the business of buying timber lands?

A. I never knew what his business was.

Q. How did you come to go there? Did somebody tell you he was buying?

A. No, Mr. Wells took me there.

Q. When you went there did you have any negotiations about price?

A. I didn't get as much as I figured on.

Q. At the time you went there—

A. (Interrupting). I forget what they gave me.

Q. Did you have any negotiations with Kinkaid about price when you went to his office?

A. I had an argument with him; I didn't get as much as I said I wanted.

Q. State the conversation.

A. I told him I was to get in the neighborhood of three hundred dollars, it seems to me, and he said they had been to so much expense they couldn't

(Testimony of Charles W. Ballentine.)

give it to me.

Q. Did you tell him who was to give you three hundred dollars? Where you was to get that? Did you say anything about this talk with Nelson?

A. I certainly did.

Q. What did you say to him about that?

A. I told him I was promised between two and three hundred.

Q. How much did you get?

A. I got just a little over two hundred, if I remember right, outside of what I put in.

Q. Why did you sell to Kinkaid if you thought you ought to have more?

A. Because I got the money from Mr. Wells and I was under obligation—

Q. Did you have any talk with Mr. Wells about this land at that time about selling it to him?

A. I was to turn over the land when I got a patent to it, if I remember right, or the final receipt, I was to turn it over for the use of the money.

Q. Mr. Wells made that arrangement with you?

A. Yes, sir.

Q. That was when; about the time you made your final proof ?

A. Yes, somewhere along in there.

Q. Was that your entire understanding, if you had such understanding, to the effect that you were to get \$300, or some other amount, out of the sale of this land, was based at the time you made your original entry upon the conversation you had with a man by the name of Nelson?

(Testimony of Charles W. Ballentine.)

A. He got me interested in it, yes, by making a statement—

Q. And you had no other talk with anybody other than Nelson relative to disposing of this land, or how much you would get out of it, or how much you would sell it for, or anything else, up to the time you made your first application?

A. No, sir.

Q. There was no reason why you couldn't sell that land to anybody else if you had wanted to, was there, and get paid for it, if you hadn't taken any money from Mr. Wells, and had paid for it out of your own money?

A. Yes, if I had paid for it with my own money I don't see why I couldn't sell it to anybody.

Q. You were under no obligation to sell it to anybody at the time you made your first application?

A. I was under no obligation to anybody when I made my application.

Q. And I think you testified that at the time you made your application you had made no arrangements to get the money to prove up with?

A. I had made no arrangements with nobody.

Q. At that time you expected to use your own money to prove up, the same as you paid the \$25?

A. I could have proved up with my own money.

Q. At the time you made your first application you had made no arrangements with anybody for money?

A. No, Mr. Nelson gave me to understand that I would get the money all right. He gave me to un-

(Testimony of Charles W. Ballentine.)

derstand, but just exactly what words he used I can't call to memory, but he gave me to understand that would be all right.

Q. Now, at the time you made your final proof, on the 22d of January, 1902—that is your signature, is it not (showing witness paper)?

A. Yes, that is my signature.

Q. Made on the 22d of January, 1902. Did you intend to tell the truth when you made that entry, or did you intend to swear falsely?

A. I told you before I put in some of my own money.

Q. Did you intend to tell the truth or did you intend to testify falsely?

A. I intended to tell the truth.

Q. This question, "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession," did you swear to that question as follows: "Some I have had for quite awhile, savings from my labor, about \$300. I borrowed \$80 from my brother, and \$25 from the Capital State Bank, and collected several small accounts"? Did you make that answer?

A. I guess I did.

Q. Was that true or false? A. I had—

Q. (Interrupting.) Was that true or false?

A. I had borrowed money from my brother and I made collections. If they had asked me at the time if that was the money I borrowed from my brother it would have been different, but that question wasn't asked.

(Testimony of Charles W. Ballentine.)

Q. Was that true or false?

A. I had borrowed money from my brother, that was true.

Q. I will read the question again: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" You swore as follows: "Some I have had for quite awhile, savings from my labor, about \$300." Did you have \$300 with which you paid for this land?

A. I said about \$300.

Q. Did you have about \$300 on hand as savings from your labor which you used to pay for this land?

A. I had some of the money, yes, sir, I had some of it.

Q. Did you have about \$300 that you had saved from your labor, which you used to pay for this land?

A. No, I didn't have \$300.

Q. Was that statement true or false?

A. I had about \$300.

Q. Was that statement true or false? We are going to have an answer to these questions, Mr. Balantine, if it takes all summer.

A. I want to answer the questions. I didn't have \$300.

Q. Was that statement true or false?

A. About \$300.

Q. Yes.

Mr. KEIGWIN.—I object to that question on the ground that it has been answered three or four times already.

Mr. BUNDY.—I want this witness to characterize

(Testimony of Charles W. Ballentine.)

his own evidence.

Mr. KEIGWIN.—That is objected to in that form on the ground that it is incompetent to require the witness to characterize his own evidence, the facts having already been fully stated.

The WITNESS.—I had about \$300.

Mr. BUNDY.—(Continuing.) Did you use that \$300 for the purchase of this land?

A. I don't remember.

Q. (Reading.) "I borrowed \$80 from my brother." Did you use that for the payment of this land?

A. I think I did.

Q. All of it? A. About all of it, I guess.

Q. (Reading.) And \$25 from the Capital State Bank? Did you borrow \$25 from the Capital State Bank?

A. I don't remember; I guess it was \$25.

Q. Did you use that for the payment of this land?

A. I don't remember, I can't remember.

Q. Look at your sworn evidence; does that refresh your memory?

A. It does not.

Q. At the time you made that answer were you intending to tell the truth about it?

A. Yes, sir.

Q. Was your recollection about it better then than it is now?

A. It ought to be better then.

Q. After looking at your evidence, do you now think that part of the money which paid for this land was \$25 you borrowed from the Capital State Bank?

A. I don't remember.

Q. Do you now think that about \$300 which you

(Testimony of Charles W. Ballentine.)

had saved from your labor was part of the money you used to pay for this land?

A. Part of it maybe; I used a portion of it, a little of it; I don't remember how much.

Q. And was the \$80 you borrowed from your brother used for the payment of this land?

A. How much I don't remember.

Q. Did you borrow it from your brother for that purpose?

A. I don't remember whether I did that or not.

Q. Then taking this entire question, No. 17, in your final proof, and your answer to it, you don't know now whether that answer is true or false, you can't remember, is that what you mean to say? Can you say now whether you used the money to pay for this land?

A. I don't remember what portion I used. I don't want to be misleading.

Mr. BUNDY.—No, I see you are very candid, witness.

The WITNESS.—If you will let me explain I will explain. If the Court pleases, I will explain just a little.

Mr. BUNDY.—(Continuing.) Mr. Balantine, you know whether you answered that question truthfully, or whether you didn't, don't you?

A. I have answered the question to the best of my recollection I told you about a portion of that money—

Q. (Interrupting.) You know whether you answered that question truthfully or falsely, don't you?

(Testimony of Charles W. Ballentine.)

A. I have answered it.

Mr. BUNDY.—I would like to have an answer to this question. If we can't get it, if this Court hasn't any power to enforce it, I think it had better be certified up. I want to know whether this man perjured himself then or now, and we are certainly entitled to know.

The COURT.—It is proper for the witness to state all the circumstances that occurred, what was said, and if he knows where he got the money, to state that.

Mr. GORDON.—I think the witness has stated that.

The COURT.—Yes, but Mr. Bundy insists on asking him over and over again.

Mr. KEIGWIN.—On our part we are perfectly willing to have the question certified to the Court and let it stand.

Mr. BUNDY.—As they put these men on the stand here that question is going to arise again.

The COURT.—I will determine, so far as I can determine, what should be done, Mr. Bundy, and if we can't get an answer that you want, while I am not to be the judge of what is proper and improper in this thing, it seems to me that it is an entirely bootless undertaking. You are to be the judges of that, of course. This thing I want to say farther. I don't like to load the case down with an immense record that is not necessary, and I don't think Judge Dietrich would think we are doing our work well if we do. I want the attorneys to assist me in that so far as they can and so far as is proper and safe for

(Testimony of Charles W. Ballentine.)

their side of the case.

Mr. BUNDY.—Here is a witness—and they are going to have a lot of them that the Government will call that will attempt to testify, and the same question is going to arise. Now, of course, I could go on and impeach this man by putting in evidence this sworn statement, but that simply discredits the witness.

The COURT.—All this matter can be argued before Judge Dietrich in the condition in which this evidence is to-day, and it seems to me, while I may be mistaken about it, that everything can be gained that would be possible to be gained under any other condition of the testimony. I am not to be the judge, however, Mr. Bundy.

Mr. KIEGWIN.—Counsel for the complainant would like to have the question certified. We are ready to meet it.

The COURT.—We will adjourn until 2 o'clock.

Court met, pursuant to adjournment, at 2 o'clock P. M., the witness Balantine resuming the witness stand, and Mr. Bundy continuing the cross-examination.

Q. Now, Mr. Balantine, after you had these talks with John Nelson in which he asked you if you wanted to make some easy money, after which you finally went up and looked over the land and then came back and entered it and made the original filing on October 29, 1901, I think you have already testified that you had had no talk with Wells, up to that time? A. No.

(Testimony of Charles W. Ballentine.)

Q. And you had no talk with Downs up to that time except the talk you had at the time he located you? A. That is all.

Q. And, of course, nothing was said up there about him finding you a purchaser or buying the land or anything else? A. Nothing whatever.

Q. So that at the time you came back here and made your original application the only discussion you had was with John Nelson in regard to finding you a purchaser to take it off your hands?

A. Yes, sir.

Q. Now, this John Nelson, as you understood, was a locator, was he not?

A. He was a laborer, but I guess he was connected with locating some way or another.

Q. You paid him, I think you said, \$25 for locating you? A. Either him or Snow, yes.

Q. After you had made this location what became of John Nelson? A. I don't know.

Q. Did he leave this country?

A. He ain't here.

Q. Did you inquire?

A. I tried to find where he was but couldn't find no trace of him.

Q. And this was after you made your first location and before final proof that you tried to find him?

A. Yes.

Q. And you tried to find him for the purpose of having him comply with his agreement to find you a purchaser, was that your purpose?

A. Yes, sir.

(Testimony of Charles W. Ballentine.)

Q. So that Mr. Nelson, as a matter of fact, didn't help you any to dispose of it?

A. Not to my knowledge.

Q. And it was after you had failed to find Nelson that you began looking around for someone else to take this property off your hands and pay you a profit for it?

A. Yes, when I couldn't find Nelson I looked to the next one.

Q. And the other one was Mr. Downs?

A. Yes, sir.

Q. And he didn't give you any particular encouragement?

A. No, not the first time.

Q. Then you went to Mr. Wells?

A. Yes, sir.

Q. And the first time I believe you said he didn't give you any particular encouragement, or did he?

A. I didn't go to Wells; I think I met him on the street.

Q. But this was after you had been unable to find Nelson?

A. Yes, sir.

Q. So that when you had your talk with Wells he agreed to furnish you some money to make your final proof?

A. He didn't the first time; it was several times before he did.

Q. But after you had gone to him several times you finally did get the money from him?

A. Yes, sir.

Q. Did you try to get the money from anyone else?

(Testimony of Charles W. Ballentine.)

A. I don't remember whether I did or not.

Q. Do you remember, Mr. Balantine, that you did go around town here and try to get the money from one or two persons to make that proof, after Nelson had left you?

A. I am not positive of that fact. I might have spoken to different parties, but I am not positive. I was anxious to find where to get that money.

Q. So finally, after some time, you made an arrangement with Wells by which he gave you the money to prove up on, with the understanding that you were to deposit the receipt with him as security for the money, or was there anything said about that?

A. Yes, but he didn't seem—he didn't speak as though that was any contract giving him the receipt, or anything of the kind, but I was to turn it over to him.

Q. This was a receipt you got from the land office for \$412.50? A. Yes, sir.

Q. And then he kept that, until in due course you got notice to make final proof?

A. No, he didn't keep it only a little while, then he give it back to me; it must have been a year or two years it was tied up.

Q. But finally you got notice from the land office that the final receipt had been allowed?

A. Yes, sir.

Q. Then you went to the land office and exchanged this receipt for the final receipt, and then, after you got the final receipt, what did you do?

(Testimony of Charles W. Ballentine.)

A. I kept it a few days and then went to Mr. Wells.

Q. And asked Mr. Wells to do what Nelson agreed to in the first place, find you a purchaser?

A. Yes, I took him the receipt and was ready to do business.

Q. By which you meant you were ready to sell out?

A. Certainly.

Q. And Mr. Wells advised you to go up to Kinkaid?

A. He told me to go with him and we went up to Kinkaid.

Q. And after you went up there you made the sale?

A. Yes, sir.

Q. So that the talk or conference you had with this man Nelson, away back before you filed at all, which, as you testified, created an impression in your mind that he was going to find you a purchaser, failed you?

A. He failed me so far as I know.

Q. You didn't finally sell it pursuant to any such arrangement?

A. I didn't get as much out of it as he agreed to.

Q. You didn't sell it pursuant to any arrangement you had made with this man Nelson?

A. No, I didn't speak to anybody else.

Q. And your first talk with Mr. Kinkaid, who did buy it, was after your final receipt had been allowed?

A. Yes, sir.

Q. Do you remember how long it was after your final proof before you made a deed to Kinkaid?

(Testimony of Charles W. Ballentine.)

A. I do not.

Q. You don't remember?

A. I don't remember.

Q. Do you remember it was something like a little over a month?

A. It might have been—it might have been more or less; I am not positive about the date.

Q. I think your final proof was allowed July 16, 1903, and the deed is dated August 31, 1903; it would be a little over a month. Is that your recollection of it?

A. It might have been two months; I kept it for some time.

Q. During the time you kept it, after your final proof, and before you finally deeded it away, if anybody had offered you more than Kinkaid was ready to give you, there was no reason why you shouldn't sell it to him? You had never gone to Kinkaid?

A. Never thought of that; nobody offered to buy it.

Q. Didn't get any letters from Centerville?

A. Never got no letters from nobody.

Q. There was no reason why you couldn't have gone out in the market and sold it after you got your final receipt?

A. I suppose I could have done it.

Q. There wasn't any agreement, was there?

A. There was no written agreement.

Q. There wasn't any verbal agreement, was there?

A. Only with Wells.

Q. Wells wanted you to pay back the money he

(Testimony of Charles W. Ballentine.)

had loaned you?

A. I don't remember him saying anything to me.

Q. At the time Wells loaned you this money did you agree to sell it to him?

A. If I got my price I believe I was.

Q. Did you agree with him on the price?

A. Somewheres between two and three hundred dollars, yes.

Q. Tell us what you said to Wells about selling him that land.

A. The best of my recollection, I was to get between two and three hundred.

Q. Tell us the conversation.

A. I couldn't tell it exactly to save my life.

Q. Did you ask Wells if he wanted to buy that land?

A. No, I don't remember of asking if he wanted to buy it.

Q. Did he tell you he wanted to buy it?

A. It seems like he was to put up the money and I was to let him have the land.

Q. Were you to sell it to him or were you to pay him back when you sold the land?

A. Nothing said about paying him back when I sold the land.

Q. Did you agree on any price?

A. I was to get between two and three hundred dollars and turn the land over.

Q. That was the agreement? A. Yes, sir.

Q. So that the money Mr. Wells gave you then, Mr. Balantine, was an advancement, as you under-

(Testimony of Charles W. Ballentine.)

stood, on the purchase price of the land?

A. Yes, you can take it that way.

Q. And that is the way you understood it with Mr. Wells? A. Yes, sir.

Q. And you took the advancement and went and paid the Government and afterwards got the balance? A. Yes.

Q. That is the first arrangement of any kind you had made with Wells?

A. We talked the thing over before—several days before I proved up, but then I didn't—

Q. (Interrupting.) That is the first agreement you ever made and the only agreement you ever made with Wells? A. Yes, sir.

Q. Prior to the time you made this original location you had never talked with Mr. Wells about it, except with Downs when you made the location?

A. That is all.

Q. You never talked with Governor Steunenberg? A. No.

Q. You never talked with the Barber Lumber Company? A. No, sir.

Q. And the only talk you had with John Nelson about selling it was that he was to assist you in finding a purchaser? A. Yes, sir.

Q. And after he got your \$25 he went away and skipped the country and left you holding the bag?

A. So far as I know, yes, he did, he wasn't around.

Q. Did you say, Mr. Ballentine, at the time Mr. Wells give you this money he told you to say it was

(Testimony of Charles W. Ballentine.)

your own money? A. Yes, sir.

Q. Can you give us his language?

A. I could not.

Q. You testified as a witness in the trial of Senator Borah some time ago, did you not?

A. Yes, sir.

Q. On the trial of that case were you asked this question: "Was there anything said in Mr. Wells' office as to what you should say when you went to the land office?" And did you answer: "I don't have any recollection whether there was or not. I don't think there was. I think I could remember it if there had been. To the best of my recollection there was nothing said." Did you testify to that?

A. I don't remember, probably I made that statement—I don't remember.

Q. Do you think the statement was true at the time you made it?

A. I remember having some—

Q. (Interrupting.) Were you attempting to tell the truth as you remembered it at the time of the Borah trial in answer to that question?

A. I remember he said something to me about it. Isn't there a question ahead of that?

Q. The question is, "What did you do with the money Wells gave you?" Answer: "I went up to the land office and paid for the land." Question: "With the money that Wells had given you?" Answer: "And made final proof." Question: "Was there anything said in Mr. Wells' office as to what you should say when you went to the land office?"

(Testimony of Charles W. Ballentine.)

Answer: "I haven't any recollection whether there was or not. I don't think there was. I think I could remember it if there had been. To the best of my recollection there was nothing said." The question is, did you so testify or didn't you?

A. I don't remember. My recollection must be better now than it was then.

Q. It is getting better as the years go by, is it?

A. It is in that particular point, it must be. I don't remember what place or anything about it.

Q. Now, according to your evidence to-day, Mr. Balantine, you seem to have really sold this land to Wells and received part of the pay at the time he advanced the money to you. Is that your understanding?

A. I don't know as I ever did sell it to Wells. I was selling it to somebody he represented.

Q. Your evidence to-day is that you were selling it to somebody else that Wells represented; you had already sold it and received an advancement on the purchase price. Is that the way you want it understood?

A. I sold it to whoever he represented.

Q. At the time he advanced you this money?

A. Something—yes.

Q. Is that the way?

Q. I had an agreement then—

Q. Didn't you testify on the Borah trial that you went to Kinkaid's office to try and sell your final receipt?

A. I went to Kinkaid's office to get my money.

(Testimony of Charles W. Ballentine.)

Q. Didn't you testify on the Borah trial that you went to Kinkaid's office to try and sell your receipt?

A. I don't remember.

Q. Question: (Reading:) "Did you go to Kinkaid's office? Answer: "Yes, sir." Question: "When you went in what did you say to Kinkaid and what did he say to you?" "I think we were made acquainted and I stated to him my business there." What did he say to you?" Answer: "The best I can remember is I wanted to sell this here final receipt I had." Did you so testify?

A. Why, certainly I did; I didn't sell it to anybody else.

Q. So at that time you didn't think your final receipt had been sold until you went to Kinkaid's office?

A. I don't think it had been sold any time until I done business.

Q. You don't testify so now?

A. I couldn't sell it until I made a deed.

Q. You never did sell it until you went to Kinkaid's office?

A. I had an agreement with Wells that I was to get my money.

Q. Had you sold it?

A. I don't consider I sold it until I went to Kinkaid's office and got my money for it.

Q. Now, you say you didn't have any talk with Mr. Wells until just a day or two, or a few days, before you proved up. That is right, isn't it?

A. Yes, sir.

(Testimony of Charles W. Ballentine.)

Q. And what were you doing at that time?
What was your business at that time?

A. I had some claims up here in the mountains.

Q. You were prospecting?

A. Yes, sir.

Q. When you met Wells what did you say to him in the first place?

A. I met him and was talking to him about claims I had up there, if my recollection is correct; I believe him and Downs had some mining claims up there. They had quite a little rock—

Q. (Interrupting.) I am speaking about these timber claims. At the time you spoke to Wells you went to him and asked him something about getting money to prove up? A. Yes, sir.

Q. And he didn't know anything about it—told you that?

A. I asked Wells and he said he didn't know anything about it.

Q. Yes?

A. I don't believe I made such a statement that he didn't know anything about it.

Q. Didn't Mr. Wells say to you that he didn't know anything about it?

A. I don't think he did.

Q. On the Borah trial, was this question asked you: "Now, did you have any talk with Mr. Wells after you filed on this land and before you proved up"? Answer: "Not until about the time I proved up." About the time you proved up what conversation did you have with him?

(Testimony of Charles W. Ballentine.)

A. Well, I met him. I was prospecting at the time, and I met him kind of, and I don't know hardly how I did meet the man. I met him; I know that.

Q. What conversation, if any, did you have?

A. Well, I spoke to him about the time for me to prove up, where I was going to get the money, where I was going to get my money, and he didn't seem to know anything about it.

Q. Did you testify that way in the Borah trial, Mr. Balantine? A. Maybe I did.

Q. Was that true?

A. Now, I was talking to him quite a little—

Q. (Interrupting.) The question is, was it true?

A. My recollection ought to have been better than it is now.

Q. Your recollection is not getting any better with age, Mr. Ballantine, as the years go by, as to these facts, is it?

A. I don't think it is getting any better, no, sir.

Q. In fact, your recollection was a good deal better at the time you made your application and final proof than it is now? A. It ought to be, yes.

Q. A good deal better than it is now?

A. Yes, sir.

Q. And the statements you made there the more apt to be correct than your statements now, if they differ? Isn't that true? A. Yes, if they differ.

(Witness excused.)

Mr. FRASER.—We desire to move to strike out all the testimony of the witness, Charles Balantine, together with all exhibits introduced in connection

therewith, for the reason that the same is incompetent, irrelevant and immaterial, does not tend to prove any of the allegations of the bill, and does not tend to prove any violation of law, and the evidence of said witness conclusively shows and proves that the entry as made in the land office of that particular tract was a legal and valid entry and not in violation of any statute of the United States.

Mr. KEIGWIN.—Counsel for the complainant repeat the statement formerly made by them in response to the same motion previously made.

Mr. GORDON.—Now, one thing about the signing of this testimony here. I understand that the witnesses will have to sign it, and unless some arrangement can be made—

Mr. FRASER.—We will waive the signing, with the condition that we may recall the witnesses if we find anything that needs correcting.

Here the following stipulation was entered into in open court:

Stipulation.

It is hereby stipulated and agreed by and between counsel for the respective parties that the depositions of the witnesses taken in this action before the Examiner may be introduced and used upon the trial of this cause without being signed by the witnesses, the signatures to the same hereby being waived by respective counsel, and counsel for each side reserve the right to recall any witness examined, and have him verify or correct any material statement made in his deposition.

[Testimony of Edward Brisbin, on Behalf of the Government.]

EDWARD BRISBIN, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edward Brisbin?

A. Yes, sir.

Q. Did you make a timber and stone entry in 1902 some time? A. Yes, sir.

Q. I will ask you to look at that, the sworn statement, and ask you if that is your signature (showing witness paper)? A. Yes, sir; it is.

Q. They are your signatures, are they?

A. Yes, sir.

Mr. GORDON.—I asked him also as to the testimony of the claimant and the other two signatures he refers to, and he says they are his.

Q. What is your business, Mr. Brisbin?

A. I am a miner and prospector.

Q. Where do you reside?

A. 617, or close to it now, South 15th street, Boise.

Q. Did you live there when you made this entry?

A. I did. That is, I lived on the lot I sold right adjoining.

Q. How long have you lived in Boise?

A. I have been here since '63.

Q. Who first spoke with you about taking up a claim?

A. An old man that lived with me. His name was Henry Rice. He lived with me sixteen years there. He was the first man.

(Testimony of Edward Brisbin.)

Q. Do you remember what Henry Rice had to say to you about this?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and calling for hearsay evidence.

A. Yes, sir; he said there was some land to be taken in timber and stone; that is, some stone and timber to be taken, and I could just as well make a little money as not.

Q. Did he tell you how much money could be made out of it?

Mr. BUNDY.—That is objected to for the same reason.

A. I don't know that he did. He said at the time, though, \$200.

Q. What were you to do to earn this \$200?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and not calling for any conversation or fact.

A. I was to go and enter some land.

Q. And what were you to do with the land?

A. I don't know. That was something I never thought much about, what I was to do with it. I assumed I was to use it for any purpose I was a mind to.

Q. Did you understand that when you got title to this land you were to convey it to somebody?

Mr. FRASER.—That is objected to as immaterial and irrelevant, and calling for hearsay evidence, and calling for a conclusion of the witness and not the facts.

(Testimony of Edward Brisbin.)

A. Yes, sir; I supposed I could.

Q. Did Mr. Rice direct you to go to see anyone?

A. He directed me to Dean West.

Q. And did you see Mr. West?

A. I saw Mr. West.

Q. What was your conversation with Mr. West about?

A. He referred me to a man by the name of Downs, Pat Downs.

Q. Did you go to see Mr. Downs?

A. I did.

Q. What did Mr. Downs tell you to do?

A. He brought me up to Mr. Wells.

Q. Mr. Downs took you to Mr. Wells?

A. Yes, sir.

Q. What conversation, if any, did you have with Mr. Wells? About entering this land?

A. I can't remember it all.

Q. Just as well as you can remember.

A. There wasn't very much conversation, but at any rate I was to go with the cruiser, with Pat Downs, and get this land that I got, or try to. We got ready for a team to go.

Q. How long after you had talked with Mr. Wells did you go up to view this land?

A. I couldn't be positive, but it was quite a little while before we went.

Q. Was there anything said at that time where you were to get your money with which to prove up?

A. Nothing said about money that I remember at that time.

(Testimony of Edward Brisbin.)

Q. Who located you on the land?

A. Pat Downs.

Q. How many pieces of land did Mr. Downs show you?

A. One piece.

Q. Did he give you a description of that piece of land?

A. Showed me the description there on the ground in the snow, showed me the corners—we walked out a piece—the lines running straight, running so (indicating).

Q. Did he give you a description by which you could prepare your filing papers?

A. He must have done so.

Q. What did you do with the description he gave you?

A. I went to Mr. Wells, to the office. I must have took the description to the land office.

Q. Did you go to Mr. Wells' office?

A. I went there before I went to the land office, I remember distinctly.

Q. Who prepared these papers for you?

A. I can't swear to that if I die.

Q. You have no remembrance of it?

A. No, I have not.

Q. Then you took this paper to the land office and filed it?

A. Yes, sir.

Q. Did you pay a locating fee?

A. I did.

Q. To whom?

A. I don't know how much it was; I paid some location fee.

Q. Who did you pay that to?

(Testimony of Edward Brisbin.)

A. In the land office, the receiver or the register.

Q. Not the fee for locating?

A. Oh, that cruiser business?

Q. Yes.

A. Yes, that was paid; that was to be paid for that man that went up there, Pat Downs, and the team.

Q. When was it to be paid?

A. I have tried my best to call my memory to it, and can't do it, but at any rate I think it was certainly paid.

Q. Do you know when it was paid? Was it paid shortly before or after you filed, or after you sold your property?

A. Some of these things I just get a shadow of; others are perfectly plain. I can't remember, but I have an impression, recollection, it was \$48.

Q. What is your best recollection as to when that was paid?

A. Before I went to the receiver's office.

Q. Which time? A. The first time.

Q. Do you know to whom you paid it?

A. No, sir; I do not. It was understood before we went that that should be paid.

Q. Did you go to the land office alone or did some one go with you?

A. I went alone without there was a party I didn't know. I was alone in my own feelings.

Q. Do you remember about the time you proved up on this land? A. That I proved up on it?

Q. Yes.

(Testimony of Edward Brisbin.)

A. That was after I had registered.

Q. Where did you get the money with which to prove up? A. I got it of Mr. Wells.

Q. Where was Mr. Wells at the time you received it? A. In his office.

Q. Did you give him a note for it?

A. I don't remember doing so.

Q. Did you pay any interest on it?

A. I don't remember doing that, even.

Q. Was there any understanding or agreement as to when you were to repay this money?

A. I don't remember of any understanding that way at all. He handed me the money silently and I went to the land office—just give me the money.

Q. When you went to Mr. Wells to get this money what did you say to him?

A. I think he done most of the talking. I don't know as I said much any way.

Q. Did he know what you came for?

A. Certainly must have known.

Q. Did you tell him what you came for?

A. I don't know as I did.

Q. How much money did he give you?

A. Four hundred dollars I am pretty sure.

Q. And you took that money to the land office?

A. Took that money to the land office.

Q. And paid it in?

A. Paid it for that land.

Q. Did they give you a receipt for that money?

A. Yes, sir.

Q. Who went to the land office with you when you

(Testimony of Edward Brisbin.)

proved up?

A. I couldn't say there was anybody there only myself.

Q. Did you go directly from Mr. Wells' office to the land office? A. At the time?

Q. I mean the time you had the \$400?

A. Yes, sir. I think I did. I never held it at all, only just went to the land office.

Q. Did Mr. Wells go with you?

A. No, he did not. He give me the money and I went to the land office and proved up on my land.

Q. Was anything said to you by Mr. Wells as to what you should answer at the land office when asked where you received that money?

A. There might have been a few words that perhaps wouldn't matter much either way. There was a few words spoken. Very little was said.

Q. Do you remember whether you were told to say where you received that money, or whether it was your money or not?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. No, I do not. I don't know that it was told me, that.

Q. How long after you proved up was it that you saw Mr. Wells again?

A. I don't know how long it would be. I don't suppose it was a great while before I went to the office again. To be positive about it, I couldn't set the time down.

(Testimony of Edward Brisbin.)

Q. Did you ever meet a man by the name of Pritchard?

A. Yes, sir; there is where I got my—where I give the deed away, in the Sonna Block.

Q. When did you first meet Mr. Pritchard?

A. Mr. Wells sent me to Pritchard's office, and I met Mr. Pritchard at the time this business was going on, at the time I got my deed I went directly to Mr. Pritchard's office, and that is the time.

Q. Is that the first time you had met Mr. Pritchard?

A. I think it was. I went and give him the deed, and he said right there then to me—when he paid me the money, I think it was three hundred or more dollars he paid me there—you will come back again in six months and sign another deed. It struck me rather nervously, his doing that. My feelings were shocked a little, although that was his business. I went back again in six months and saw Mr. Wells and he said they didn't need me no more. I didn't go to the office; that I remember distinctly.

Q. See if that is the deed you signed. (Showing witness paper.)

A. That is my name. This must be the deed. I didn't look at it much.

Mr. BUNDY.—What is the date of that?

Mr. GORDON.—July 12, 1902.

Q. By Mr. GORDON, Continuing.) Did Mr. Wells go to Pritchard's office with you?

A. No, sir; I went alone.

Q. When you got to Mr. Pritchard's office, what

(Testimony of Edward Brisbin.)

was said about selling this land?

A. All that I see was what was said, Mr. Pritchard said about the deed, that was all that was said, no more.

Q. Was anything said about how much you were to get for it?

A. I got the money then when I give him the deed.

Q. How much?

A. There is another thing that is a little bit flighty with me. I have tried my best to recollect the amount, but it was in the neighborhood of \$300.

Q. Did you ever pay back Mr. Wells the money you received from him?

A. I couldn't say as I did. If he give me any money I certainly paid it back, but I don't know, don't remember any such thing at all. I am very careful of that.

Q. There wasn't anything said about the money that Wells loaned you in Pritchard's office when you were selling this property, was there?

A. I didn't consider it a loan. No, there was not a word said in Pritchard's office—very few words anywhere.

Q. Did Mr. Pritchard know what you came there for?

A. It looks like it, because he took the deed and paid me the money and made those remarks.

Q. Was the deed prepared when you got to Mr. Pritchard's office?

A. It was prepared before I got there.

Q. He had the deed there?

(Testimony of Edward Brisbin.)

A. No, I can't say that. I took the deed there. I think I took the deed there.

Q. Where did you get the deed from?

A. It was sent to me. I think the Government gave it to me. They must have given me the deed.

Q. Do you mean the deed, or the receipt, or the patent?

A. The patent.

Q. Where did you first see this paper?

A. In Pritchard's office. I have got an idea that this deed was sent to me by mail or give to me in the land office—I have an idea that way. I have an idea that is where I first saw it, because if I didn't carry this deed up, at any rate I signed this deed in Pritchard's office. That is what I done for I didn't carry it up. It was in the office.

Q. How long were you with Mr. Pritchard that day?

A. In all, fifteen or twenty minutes, maybe not that.

Q. Now, you will try to remember whether or not you paid the locating fee, or paid the fee for the cruiser before you filed, or whether it was taken out when you signed that deed?

A. It is a very simple question, and certainly should be answered, but I declare I can't find the proof of it in my mind. I can't tell when that was if I die, that I paid that cruiser, whether it was taken out or not.

Q. Did you get as much money in Pritchard's office as you understood you were to get?

A. I had the impression at that very moment that

(Testimony of Edward Brisbin.)

it was short; that it wasn't as much as I had been told that others had got, or talked about it personally to me.

Q. Have you any recollection of how much short you were of what you expected to get?

A. About the amount, about \$40.00. The general impression was this way; in their talk, in which I never advanced any argument, or anything else, only listened to, was that we settled up this business with the cruiser and then it would be taken out of the last business, and I expect they had taken it out, and I don't know as I counted my money at all; I just put it in my pocket and went. If it was took out there when I went home—I counted it and it seemed to me they must have took it out.

Q. Do you remember how much you thought they took out?

A. I thought there was forty-odd dollars took out of what I expected to get—that was my recollection.

Mr. GORDON.—We offer in evidence the sworn statement of Mr. Brisbin, dated April 18, 1902, the testimony of the claimant, dated July 9, 1902, the cross-examination thereto, and the certificates of the register and receiver, dated July 9, 1902, and the deed dated July 12, 1902, to lot 3 southeast quarter of the northwest quarter and the north half of the southwest quarter of section 1, township 7 north, range 5 east of Boise meridian; also the patent, dated March 17, 1904, and the certificate of recordation attached thereto.

Mr. FRASER.—To the introduction of these ex-

(Testimony of Edward Brisbin.)

hibits and all of them counsel for the defendant objects for the reason that they are incompetent, irrelevant and immaterial, no foundation having been laid for their introduction; that they do not tend to prove any of the allegations of the bill; the testimony of the witness shows that at the time he entered the land in the land office and made application to purchase the same, the entry and application were legal and not in violation of any law of the United States.

(Brisbin papers marked as Plaintiff's Exhibits from 16A to 16G inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. What is your age, Mr. Brisbin?

A. I am 74 years old the 18th day of next October.

Q. Henry Rice was a friend of yours, I understand?

A. He lived with me sixteen years, on my place.

Q. Lived there with you or near you?

A. He lived near me, right there on my place.

Q. And he was the first man that suggested to you this timber business?

A. The first man that ever spoke to me about it.

Q. Did he tell you in substance that there was an opportunity—

A. (Interrupting.) This is what he said. He said, "Ed, you can make a little money." "Well, how?" "Well, there is timber to be taken and stone under the stone act," and he says, "You might as well use your right now as ever," and he said, "You

(Testimony of Edward Brisbin.)

will never have a right to use it again." He says, "If you take it with so and so, if you take it outside, they will steal all your timber off anyway," he said. That was the idea.

Q. That was the idea, that you could exercise your right as an American citizen and make some money?

A. That was the idea exactly, and make a few dollars out of it, but I didn't know all of this business with the Government.

Q. At the time you had this talk with Mr. Rice, did he say to you anything about their being a market for it, or people that would be in the market for it, or you could sell it for more than it cost you?

A. He told me to go over to Dean West.

Q. What did he say?

A. Mr. West referred me to Downs and Wells.

Q. Mr. Downs was what was known in this country as a locator, wasn't he?

A. Yes, sir; I think so.

Q. That is, he cruised the land and surveyed the corners, and then took people onto the land, and they paid him so much for his work?

A. Yes, sir; that is the way, it seemed.

Q. And did you go up and see Mr. Downs finally?

A. I saw Mr. Wells in his office, and he saw Mr. Downs and he told me such a day we will get together and there was some more parties, and we will get a team and see the land.

Q. Who paid for the team?

A. As I say, I tried my best to hunt up how that

(Testimony of Edward Brisbin.)

was paid, but I can't.

Q. Who went with you?

A. There was some parties from Minnesota, party had cases, a couple of them.

Q. You don't remember their names?

A. No, I don't. I knew none of them by general friendship.

Q. Do you recall their names?

A. No, they was from Minnesota. I don't know their names, although we was together.

Q. Now, this exhibit here, your first application for timber and stone land, dated April 18, 1902, and signed by you—

A. (Interrupting.) Yes, that is my signature.

Q. That was made under oath?

A. Yes, sir, it looks like it.

Q. In that statement you made to the Government it says this: "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly, or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true at that time, wasn't it?

A. Yes, sir.

Q. And at the time you made this application on April 18, 1902, you had had no talk with anybody about selling it, had you?

A. I didn't put any bearing on my thoughts. I

(Testimony of Edward Brisbin.)

don't think I put any bearing at all on my mind on that business; I don't think I did in regard to who should have that timber. I will tell you how I felt about it. The Government I felt when that land was deeded to me it was mine. That was my general impression; that was what I thought.

Q. Now, Mr. Brisbin, let us just confine ourselves to this one thing. At the time you made the application you hadn't agreed to sell it to anybody, had you? There hadn't anybody offered to buy it at that time?

A. They was very scarce of words in regard to the business. It was all still. There was very little talk about it.

Q. I am speaking of the time, Mr. Brisbin, when you went and made your first application and made this sworn statement. That was true, wasn't it, at that time?

A. I must have not made any contract, only the contract would be ruling over me because I went and examined the timber. I had no business to look at their timber or do anything.

Q. Those timber?

A. This company's timber. By going with Downs I laid myself liable by having anything to do with it undoubtedly, because if I had put my own money in, I had been using their cruiser. I don't know who Downs was working for. I never knew who he was doing anything for. I supposed it was their timber. I didn't know who they was. I didn't know who the company was. I supposed Mr. Prit-

(Testimony of Edward Brisbin.)

chard was the company. He handed me such a bunch of money.

Q. How did you know there was any company?

A. It appears there is a company now.

Q. Did anybody tell you there was a company that wanted to buy the land?

A. I don't remember that they did. Nobody said anything about that to me. I had that impression—there must be.

Q. I want to find out, to go back—I want to get your mind back to the time Rice spoke to you—to the time Mr. Rice spoke to you and the time you finally went up and looked at the land, and the time you went and made the application, on April 18, 1902. Up to that time, now, had you ever had any talk with anybody about selling them that land?

A. No, sir, I had not.

Q. Has anybody up to that time made any offer to buy it?

A. No, sir, I never had no talk of selling it.

Q. Was there any agreement at that time, when you made your first filing, by which anybody but yourself was to have the benefit of the land you were then locating?

A. No, there was not; there positively was not.

Q. And after you had made that original application, was there anything that would prevent your selling it to anybody who would pay you the most of it?

A. It didn't look as though there was.

Q. Was there anything of that kind?

(Testimony of Edward Brisbin.)

A. They handed me a paper when I was in that chair in the receiver's office to read, which I had never read before—I never read a paper of that kind before—which gave me to understand that the companies and so on shouldn't hold these lands, and I felt very queer, and if I had used my own feelings I would have got out of the chair and run off.

Q. That was when you made your final proof?

A. Yes, that paper—

Q. (Interrupting.) When you paid the money?

A. That is it, sir; the \$400.

Q. Now, you seem to have in some way got an impression that because Mr. Wells advanced you some money to make your final proof, that there was some company or somebody interested in this deal.

A. Yes, sir.

Q. Now, at the time you made your first application, when you just went in there and filed, you hadn't anybody's money, had you? A. No, sir.

Q. And there hadn't anybody agreed to furnish you the money at that time, had they?

A. No, sir, they had not.

Q. So that at the time you didn't have any impression but what you were doing exactly right, had you? A. I thought so.

Q. At that time? A. Yes.

Q. And you made that original application solely for your own use and benefit, just as you testified, did you not? A. Yes, in good faith too.

Q. In absolutely good faith, as an American citizen under the law? A. Yes, sir.

(Testimony of Edward Brisbin.)

Q. And you didn't have any kind of agreement, with Wells or with anybody else, by which they had any right, title or interest in the claim you were making in either the land or the timber at that time, did you?

A. No, sir.

Q. And if anybody did get any rights, as you thought, to that land, it was some time afterwards, when you got together the money to make final proof. Is that correct?

A. Yes, sir.

Q. At the time you made your first application, had anybody talked to you then about lending you money to make final proof with?

A. No, sir.

Q. Had you made any arrangements at that time at all about getting the money?

A. I had ideas of my own outside of this business that perhaps it would be advisable to speak about, so that you will understand. I had \$400 in my pocket. Since you speak about it I will explain it all. Well, I got \$200 from John McLellan, a friend of mine, and I had \$200 more—I had my own money then. I thought I could take that money and use it and nobody else would have anything to do with it in any shape or manner. I found out then there was a cruiser at the head of it. I thought I had better use that money and let my money lay.

Q. So that right at the time you made your first application to buy this land it was your intention to pay for it with your own money and absolutely own it?

A. I want to swear to it, as it absolutely is. I had borrowed this money from McLellan, \$200, and I had \$200 of my own.

(Testimony of Edward Brisbin.)

Q. And when you made the application first you intended to use that money to prove up?

A. I intended to first, so that it would be solid.

Q. Have you been interviewed a number of times, Mr. Brisbin, by special agents and officials of the Government?

A. Only just in the case of the trials, that is all.

Q. How many times?

A. Once I was away entirely. I guess they thought I had run away; I was up there to my mine in Wood River. This will be the third time I have had anything to do with it.

Q. Have you been told by some of the officials that you were using some company's cruiser?

A. No, I wasn't. I got that impression myself. That was my own idea.

Q. Do you know where you got that impression?

A. I just got it because I never hired them; I didn't know who did get them.

Q. I think you testified that before you went up you were told that you would have to pay the cruiser?

A. That is it exactly.

Q. Do you remember who told you that?

A. There was so much gab and talk about it that it is hard to remember all these things.

Q. At the time you went up there you expected to pay the cruiser? That was paid on your return from the trip, wasn't it?

A. It might have been.

Q. You are not clear on that?

A. It is kind of shady. I am trying to trace it.

(Testimony of Edward Brisbin.)

Q. At the time you made your entry and location, went up there, you understood that you yourself had to pay the cruiser, didn't you?

A. All four of us.

Q. And you did pay it sometime, but you don't remember just when?

A. It will come to me after it gets all done, some night.

Q. You did pay it sometime, did you not?

A. It must be paid.

Q. So that when you went up you didn't think you were going up on the company's cruiser or anybody else's cruiser but your own?

A. Of course we went from the office and I must have been going up on other people's business. I couldn't take their work, their rights, I couldn't take them.

Q. Now, at the time you got this money from John I. Wells to prove up on, how long before the day of final proof was that?

A. It seems to me six months was spoke about some way—it seems to me quite a while.

Q. How long before you got the money from him did you—

A. (Interrupting.) Walked into the office and put it down right away.

Q. You say you got this money to prove up with from John I. Wells? A. Yes, \$400.

Q. Now, had you had a talk with Wells before that about lending you the money? A. No.

Q. Who told you to go there?

(Testimony of Edward Brisbin.)

A. I heard somebody say something about it. I went there.

Q. Maybe I can refresh your recollection on that, Mr. Brisbin. The fact was that it was generally known on the streets and every place that John I. Wells was buying timber lands? A. It was.

Q. And you went in there because of the general repute that that would be a good place to go to sell the land, wasn't it? A. I don't know.

Q. Can you recall any other reason that took you to John I. Wells' office to get the money?

A. You are right. Most of these impressions were known on the street and everywhere else you would find this impression without asking for it, and I think that is the way I must have got it, so I went up there and he gave me the money.

Q. At that time had you made any arrangements to sell this land?

A. No, I had not. There was never any talk about selling the land.

Q. And you were still at liberty to sell it at that time to whoever would pay you the most for it?

A. Expect I was.

Q. In answer to a question Mr. Gordon asked you you said Rice told you you could make \$200.

A. Yes, he did.

Q. Did you understand that was to be made by getting the land and selling it at a profit?

A. I had that impression—I certainly had that impression.

Q. Mr. Rice didn't tell you who would buy it?

(Testimony of Edward Brisbin.)

A. No, he didn't.

Q. Didn't know who was going to buy it?

A. No, I did not. Mr. Ridenbaugh came in there once and I supposed he was the sawmill man.

Q. So that when you entered into this with the expectation of making a few hundred dollars, it was the expectation of getting the land for your own and selling it at a profit?

A. That was the idea I had.

Q. You wasn't working for anybody for wages?

A. It don't look so.

Q. And you didn't understand you was making any entry for anybody else?

A. I wasn't. I made the entry for myself.

Q. And for your own benefit? A. Yes, sir.

Q. Did you ever at any time have any talk with anybody about selling this land before the time you got your final receipt?

A. No, sir, I did not. Only that man down there, McLellan—we talked a little bit. He said he would put the money all up and we would take the land and give me half of it.

Q. Outside of that did you ever have any talk with anybody about selling this land to them before you got your final receipt? A. No, I did not.

Q. And after you got your final receipt, then you felt you were at liberty to sell it?

A. It looked so to me. I didn't think it made any difference.

Q. And after you got your final receipt then you wanted to sell your land, did you not? After you got

(Testimony of Edward Brisbin.)

your final receipt from the land office, then you understood you had a right to sell it, didn't you?

A. I believed so.

Q. Then you went up to somebody's office—where did you go first?

A. I went to Wells' office first.

Q. And did you tell him you wanted to sell?

A. No, I did not. I never said a word to him about it.

Q. Did he tell you Pritchard was buying the land?

A. I supposed Pritchard was the big man. I supposed so after he paid me.

Q. Did you have any discussion with Pritchard about how much you were to get?

A. No, sir.

Q. It was generally understood at that time that those lands were bringing so much a quarter section?

A. Yes, sir.

Q. They were sold for a general price?

A. Yes, sir.

Q. And here in Boise at that time there were a great many of them exchanging hands for about a uniform price?

A. Yes, sir.

Q. And your disappointment was that you didn't get as much as you had heard they was paying for claims?

A. I knowed my money didn't seem the same as I expected to get.

Q. When you say what you expected to get, it was what you learned other people were getting?

(Testimony of Edward Brisbin.)

A. Yes, sir. Rice told me how much he got, and I never paid much attention to any of them.

(Witness excused.)

[Testimony of Dean West, on Behalf of the Government (Recalled for Further Cross-examination).]

DEAN WEST, recalled for further cross-examination, testified as follows:

Examined.

(By Mr. FRASER.)

Q. Mr. West, did you at any time during the year 1901, or at any other time, tell Lewis K. Burns that the Barber Lumber Company had seventy-five or a hundred thousand dollars in the bank here in Boise to buy up these claims, or to scatter around among the boys?

A. No, sir, I didn't know there was such a thing as the Barber Lumber Company at that time. I had never heard of it.

Q. Did you have any conversation of a like character, anything in regard to that? A. No, sir.

Q. Did you ever speak to him in regard to that matter at all? A. No, sir.

Q. Did you ever tell him that the Barber Lumber Company would furnish the money to see him through in making his final proof?

A. No, sir, I didn't know anything about the Barber Lumber Company, or didn't know there was such an organization at that time.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. When did you first learn of the Barber Lum-

(Testimony of Dean West.)

ber Company?

A. I couldn't state, or where, but it was some long time after that.

Q. Couldn't you give the year?

A. No, I couldn't.

Q. Was it as early as 1903?

A. I couldn't say as to that—1903, 1904, something like that, was the first I heard of it.

Recross-examination.

(By Mr. FRASER.)

Q. Did you tell Mr. Burns at that time that he was to turn over his claim after he acquired title to the Barber Lumber Company?

A. No, sir.

Q. No statement to that effect?

A. No, sir.

(Witness excused.)

[Testimony of Lewis Nibler, on Behalf of the Government.]

LEWIS NIBLER, being first duly called and sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Mr. FRASER.—Counsel for the defense move to strike out all the evidence of the witness Brisbin, together with the exhibits introduced in connection therewith, for the reason that it is incompetent, irrelevant and immaterial, and does not tend to prove any of the allegations of the bill, and the testimony of the witness Brisbin proves that at the time the land was entered and the application to purchase made at the land office, and at the time of final proof, the entry was legal and did not violate any law of

(Testimony of Lewis Nibler.)

the United States.

Q. (By Mr. GORDON.) Your name is Lewis Nibler, is it? A. Yes, sir.

Q. Where do you reside, Mr. Nibler?

A. Boise City.

Q. What is your business? A. Laborer.

Q. How long have you resided at Boise?

A. About thirty-three years.

Q. How old are you now?

A. I will be forty-four next month.

Q. Mr. Nibler, are you a married man?

A. No, sir.

Q. Did you take up a timber claim under the timber and stone act in November, 1901?

A. Yes, sir.

Q. Is that your signature to the sworn statement (showing witness paper)? A. Yes, sir.

Q. And is that your signature to the testimony of claimant (showing witness another paper)?

A. Yes, sir.

Q. Mr. Nibler, who first spoke with you about taking up this land?

A. Well, sir, I just talked around on the street.

Q. Was it common talk? A. Yes, sir.

Q. Well, who was the first person that you remember that you talked with or that talked with you about taking up this land?

A. Well, sir, I couldn't say for sure.

Q. We are asking for your best recollection.

A. But I believe I talked with Mr. Link; he was going up with them.

(Testimony of Lewis Nibler.)

Q. Who else did you talk with before you went up there?

A. I don't know. I can't say for sure, but I think it was Mr. Downs. I ain't sure.

Q. Well, after you talked with Mr. Downs do you have any recollection of what he said at that time?

A. Well, he said I could go up and take up a timber claim and get so much money, and they would furnish the money to prove up on.

Q. Who was to furnish the money to prove up on?

A. John Wells.

Q. And how much money were you to get?

A. Two hundred and fifty dollars.

Q. And how— Now, was that conversation had with Mr. Downs?

A. I think so. I can't be very positive.

Q. Was that conversation had with Mr. Downs before you went up to see the land?

A. I think so, yes, sir.

Q. Was there anything said at that time with reference to what you should do with the property should they give you the money to prove up?

Mr. BUNDY.—That is objected to as incompetent, immaterial, and irrelevant, and referring to some conversation which the witness said he don't know whether he had or not.

A. It was to go back to them, I believe.

Q. Who do you mean by them?

A. Wells.

Q. Wells is only one person.

A. Excuse me, it was to go back to Wells.

Q. Was there anything said about what it would cost you for the cruiser or for the locating fee?

(Testimony of Lewis Nibler.)

A. No, sir.

Q. Did you ever pay a locating fee?

A. I came out \$25 short.

Q. When was that?

A. After I proved up. After I got my money.

Q. Why was it you got \$25 short? Was any explanation made of it?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and not connected with any conversation.

A. It was for filing I guess, for locating.

Q. Who held that out?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, assuming something not in evidence.

A. Mr. Pritchard.

Q. Do you know Mr. Pritchard's first name?

A. I do not.

Q. Did you ever hear it? A. Yes, sir.

Q. Was it Mr. Louis M. Pritchard?

A. I couldn't say. I know the gentleman but I don't know what his initials are.

Q. Who directed you to the land that you were to locate on? A. Mr. Snow.

Q. Do you know his first name?

A. No, sir.

Q. Where did you meet Mr. Snow?

A. Here in Boise.

Q. Do you know who introduced him to you?

A. No, sir.

Q. What was the occasion of your meeting him?

(Testimony of Lewis Nibler.)

A. I couldn't say. He went up with us.

Q. Who else went with you?

A. Gus Link, Mary Link, Mrs. West, and a gentleman by the name of Charlie Nelson.

Q. Who located you? A. Mr. Snow.

Q. Did Mr. Snow show you over different pieces of land or just take you to one piece?

A. Just took us to one place.

Q. And what did he say?

A. He says, here is the ground—timber.

Q. Did he give you a description of it?

A. No, sir, not as I remember.

Q. Then you came back to Boise, did you?

A. Yes, sir.

Q. Did all the party come back then?

A. Yes, sir.

Q. Did you go with the rest of them when they took them over their lands, with the rest of the party?

A. Yes, sir.

Q. Did I understand you to say that all of the party came back together? A. Yes, sir.

Q. Where did you stop, what place did you go to locate this land? A. Centerville.

Q. How long did you remain in Centerville?

A. Over night.

Q. What place did you stop at?

A. A boarding house Mrs. Hunter run.

Q. Do you remember what time of day it was you arrived at Boise on your return?

A. About nine o'clock at night.

Q. How long after that was it that you went to

(Testimony of Lewis Nibler.)

the land office? A. I couldn't say for sure.

Q. Was it the next day or the next week?

A. Oh, the next couple of days.

Q. Did you go to see or have anyone come to see you about this before you filed?

A. The only man I remember is Mr. Snow. He made out the papers.

Q. He made out these papers?

A. The filing papers.

Q. Where did he make them out for you?

A. In Lemp's saloon.

Q. Were you employed at Lemp's saloon at that time? A. No, sir.

Q. Did you meet him there by appointment?

A. Yes, sir.

Q. When did you make that appointment with him? Here, or up where this land was?

A. After we got back from up there.

Q. Well, did you go to the land office alone?

A. No, sir.

Q. Who went with you?

A. Gus Link, I believe, and some other parties.

Q. Did you have any money with which to make final proof when you made this entry?

A. No, sir.

Q. Where did you get the money with which to make this proof?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial.

A. Mr. Wells.

Q. Did you go to see Mr. Wells or did he come

(Testimony of Lewis Nibler.)

to see you, or how did you meet him?

A. Well, he come to see me.

Q. What did he say?

A. He said he would give me the money to prove up on.

Q. How much money did he give you?

A. \$412.50 I believe.

Q. Did you give him a note for it?

A. No, sir.

Q. Did you pay him any interest on it?

A. No, sir.

Q. Did you promise him when you would pay it back?

A. No, sir.

Q. Anything said about it?

A. No, sir.

Q. Did he go to the land with you or did you go by yourself?

A. Went by myself.

Q. Was anything said when he gave you the money about what answer you were to make to questions when asked where you got the money from?

A. No, I don't believe he did—not as I know of.

Q. When you paid your money into the land office, they gave you a receipt for it, didn't they?

A. Took it to the bank, deposited it in the bank.

Q. You deposited it in the bank?

A. Deposited it in the bank and give them a receipt for it at the land office.

Q. What was it that you—you took the money to the bank, did you?

A. Yes, sir.

Q. And they gave you a receipt for it, as you understood it?

A. Yes, sir.

Q. And was that for \$412.50?

(Testimony of Lewis Nibler.)

A. I think it was.

Q. And was that what you paid for the land in the land office? Did you give them that receipt instead of money? A. Yes, sir.

Q. When you did that what did the people in the land office give you? Did they give you a receipt?

A. I don't remember.

Q. (By Mr. KEIGWIN.) You remember that you got a paper from the land office showing that you had made this entry, don't you?

A. Yes, sir.

Mr. KEIGWIN.—That is the receipt.

Q. (By Mr. GORDON.) Now when you went into the land office, and paid them this \$412.50 they gave you a receipt for it, didn't they?

A. Yes, sir.

Q. What did you do with that receipt?

A. Took it to the land office?

Q. No, you got it at the land office.

A. I wanted to pay them this money and it was late in the evening, and he said, "Take and deposit it in the bank, and get a certificate of deposit."

Q. (By Mr. KEIGWIN.) It was that certificate of deposit that you gave to the land office?

A. Yes, sir.

Q. (By Mr. KEIGWIN.) Then they gave you a memorandum of that money, didn't they?

A. They must have, I don't remember.

Q. (By Mr. GORDON.) Did I understand you to say—you met Mr. Pritchard, did you?

A. Yes, sir.

(Testimony of Lewis Nibler.)

Q. When did you first meet him?

A. After I got the deed to the land.

Q. Deed, you mean? Or receipt from the land office?

A. The receipt from the land office, I guess.

Q. Well, the day you got something from the land office, you mean you met him?

A. I don't know.

Q. Tell us how you met Mr. Pritchard.

A. Well, I took that receipt from the land office, that I got from the land office, and gave it to Mr. Pritchard; that is after I proved up on it.

Q. And did you go right from the land office to Mr. Pritchard's office, or when did you go?

A. I don't know; I think it was next day.

Q. Did you go alone, or with some one?

A. I went alone, I believe.

Q. Had you ever met Mr. Pritchard before?

A. I had seen the gentleman lots of times, but never had no business with him.

Q. Had you ever met him? I mean did anybody ever introduce you to him, or did you know him to speak to? A. No, sir.

Q. Did I understand you to say you went to Mr. Pritchard's office? A. Yes, sir.

Q. What did you do when you went there? Did you introduce yourself to him?

A. I told him my name.

Q. What did he say? Did he ask you what you came for?

A. I told him I got a receipt to turn over to him.

(Testimony of Lewis Nibler.)

Q. And what did he say?

A. He said all right.

Q. Did he ask you to do anything, or what did you do there?

A. I turned over that receipt and he paid me my money.

Q. How much money did he give you?

A. Two hundred and twenty-five dollars.

Q. Did you have any talk with him as to how much money you were to get? A. No, sir.

Q. Did you tell him you thought you ought to have more?

A. I understood I was to get \$250.

Q. Was Mr. Wells there at that time?

A. No, sir.

Q. Was anything said at that time you were with Mr. Pritchard about the money you had got from Mr. Wells? A. I didn't understand that.

Q. Didn't you understand the question?

A. No, sir.

Q. I mean, when Mr. Pritchard gave you that \$225 was anything said at that time between you and Mr. Pritchard about the money you had gotten from John I. Wells? A. No, sir.

Q. Did you ever make but the one entry under the timber and stone law? A. That is all.

Q. Did you make a deed for that land in Mr. Pritchard's office?

A. Why, I made out something there.

Q. Did you sign a paper there and swear to it?

A. I signed a paper. I don't know whether I

(Testimony of Lewis Nibler.)

swore to it or not.

Q. Was that the same day he gave you the money? A. Yes, sir.

Q. Is that the paper you signed (showing witness paper)?

A. That is my signature there (indicating).

Q. Were you ever at Mr. Pritchard's office concerning this property after that? A. No, sir.

Q. Did they ever ask you to make another deed?

A. No, sir.

Q. Had you ever met Mr. Wells before about the time you were to take up this land?

A. No, sir. I seen him several times—I never had talked with him any.

Q. (By Mr. KEIGWIN.) What is John Wells' occupation? A. I don't know.

Q. (By Mr. KEIGWIN.) Did he have an office? A. Yes, sir.

Q. (By Mr. KEIGWIN.) You don't know what business he was in? A. No, sir.

Q. (By Mr. KEIGWIN.) Had you had any personal acquaintance with him before this transaction? A. No, sir.

Mr. GORDON.—We offer in evidence the sworn statement of Mr. Nibler, dated November 1, 1901, the testimony of the claimant, dated January 28, 1902, the cross-examination thereto, and the certificates of the receiver and register of the land office, dated August 6, 1902, the deed of Louis Nibler, dated August 7, 1902, certified copy of the patent, dated February 1, 1904, and the certificate of recordation

(Testimony of Lewis Nibler.)

of the southeast quarter of section 23, in township 7 north of range 5 east, Boise Meridian.

(Nibler papers marked from 17A to 17G inclusive.)

Mr. FRASER.—Counsel for the defendant objects to the introduction of these exhibits and all of them for the reason that they are incompetent, irrelevant and immaterial, no foundation having been laid for their introduction, and they do not tend to prove any of the material allegations of the bill, and the evidence of the witness shows that the entry of this tract of land at the land office at the time of the application to purchase was regular and lawful, and does not violate any act or law of the United States.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Nibler, you said you are a laborer. Where are you working?

A. I ain't working now. I work at anything I can get to do.

Q. Where were you working in 1901 when you made this timber entry?

A. I wasn't working right at the time. I had been driving team I think.

Q. Were you in a livery stable most of the time?

A. No, sir, driving team on the road.

Q. Livery team? A. No, sir, freight team.

Q. How long since you have been at work?

A. I quit work in November, about the first of November.

Q. What have you been doing since then?

(Testimony of Lewis Nibler.)

A. Haven't been doing much of anything.

Q. Have you had several talks with any of the special agents of the Government about this matter?

A. No, sir.

Q. Never at any time? A. No, sir.

Q. Were you ever before a grand jury?

A. I believe I was last spring.

Q. Did you have any talk with any of the Government officials before you were called before the grand jury? A. No, sir.

Q. Did you testify on the Borah trial?

A. Yes, sir, I was here.

Q. Did you have any conference with any of the Government officials before that trial?

A. No, sir, not that I remember of.

Q. Did you have any talk with Mr. Ruick in his office in this building before the Borah trial, or didn't you? A. I believe so, yes, sir.

Q. How many times?

A. In there once or twice, I believe.

Q. Did Mr. Ruick tell you at that time that if you would testify as desired you would not be prosecuted for perjury? A. He didn't say.

Q. Did he make you some kind of a promise?

A. Not Mr. Ruick.

Q. Was it Mr. Sharp that made that promise, or who was it?

A. I couldn't say who it was.

Q. It was one of the Government detectives, was it? A. Yes, sir.

Q. Where was it you had that talk?

(Testimony of Lewis Nibler.)

A. Upstairs in the building.

Q. At that time did he assure you that if you would testify as desired you would not be prosecuted for perjury? A. Yes, sir.

Q. And pursuant to that arrangement you made with that officer you testified in the Borah trial and are testifying here today? A. Yes, sir.

Q. And would you have testified as you have before the Borah trial or in this trial if it had not been for that arrangement?

A. I guess I would have to tell the truth.

Q. Would you have testified as you have but for that arrangement? A. Yes, sir.

Q. Did you, when you made your application before the land office for this land, testify to what you knew to be false or did you think you were telling the truth at the time?

A. No, sir, I didn't think I was telling the truth.

Q. Is that true the time you made your final proof, or which time, or at the time you made your original filing?

A. I didn't understand that just right.

Q. You say you didn't think you were telling the truth before the land office? A. No, I didn't.

Q. You intended to testify falsely before the land office did you?

A. I didn't know what I was doing, that was all.

Q. Were you drunk? A. No, sir.

Q. You were sober? A. Yes, sir.

Q. You intended to testify to that which you knew not to be true? A. I done it.

(Testimony of Lewis Nibler.)

Q. You say the first you heard anyone suggest to you anything about these timber entries was talk on the street?

A. Yes, sir.

Q. As a matter of fact, about that time there was a great deal of talk on the streets about lands in the Boise Basin having been opened to entry? Isn't that a fact?

A. Yes, sir.

Q. And a good many people were, as you understood, going up there and availing themselves of their rights?

A. Yes, sir.

Q. And there were a number of people here in this city who were in the business of locating, were there not?

A. I guess there was.

Q. Among the cruisers was this man Pat Downs, was he not?

A. I heard he was.

Q. You understood that was his business?

A. Yes, sir.

Q. Cruising and estimating the timber, and finding the corners and showing them to people, and giving them the numbers for a consideration?

A. Yes, sir.

Q. And you understood that there was other people engaged in that same business, did you not?

A. Mr. Snow, yes, sir.

Q. Did you know any other men who were engaged in that business besides Downs and Snow?

A. No, sir.

Q. Now, the first man that really spoke to you about it was Gus Link, was it not?

A. Yes, sir.

Q. And that was in his saloon in this city?

(Testimony of Lewis Nibler.)

A. He was tending bar for Mr. Lemp.

Q. Can you remember what Mr. Link said to you?

A. He wanted to know if I wanted to go up. He said he was going up.

Q. And that was the first talk you had with anybody?

A. Yes, sir.

Q. You hadn't talked to Mr. Downs at that time?

A. No, sir.

Q. Did you tell him yes?

A. I told him I would go up.

Q. Did he say when he was going up?

A. Yes, sir.

Q. When did he say they were going?

A. I couldn't say for sure.

Q. Was it very soon?

A. Yes, sir.

Q. And did you go at the appointed time with Mr. Link and wife?

A. Yes, sir.

Q. Up to that time had you had any talk with Downs?

A. Not till just before I started.

Q. Where was it you started from?

A. Boise, here.

Q. What particular place in Boise, if you remember?

A. I don't remember just where it was.

Q. Did you see Downs just before you left or was it after you come back?

A. It was before we left.

Q. Who was present at the time you saw him, do you remember?

A. I don't remember.

Q. Were you in the rig on the way going, then?

A. No, sir, it was before that.

(Testimony of Lewis Nibler.)

Q. And at that conversation with Mr. Downs did you ask him about being located? How did the conversation come up? What was the conversation?

A. I don't remember.

Q. That is the time that you testified to in answer to questions from Mr. Gordon that you was not sure whether you had the talk with Downs or not? You were not very certain of that conversation, I think you said? A. I ain't certain.

Q. You are not certain that you had any talk with him at all before you went up there, are you Mr. Nibler? A. I am not very sure.

Q. I think you testified that if you had a talk with anybody it was Downs. Is that true?

A. Yes, I guess it is.

Q. You wouldn't swear positively that you had a talk with Downs before you went up to the land, would you? A. I ain't right sure.

Q. After you had gone to the land with Snow and been located by Snow, you returned to Boise?

A. Yes, sir.

Q. And Mr. Snow, I think you said, made out your papers? A. Yes, sir.

Q. And also made them out for the other members of the party? A. I think so.

Q. And then you went up to the land office to make your filing? A. I think so.

Q. Up to the time you went to the land office to make the first filing, you hadn't had any talk with John I. Wells? A. No, I think not.

Q. And you hadn't had any talk with Mr. Downs

(Testimony of Lewis Nibler.)

at that time? A. No, sir.

Q. So, at the time you went to the land office and made this original filing, which is dated November 1, 1901, you had had no talk with anybody about entering timber and stone lands except what talk you had had with Mr. Link and Mr. Snow and the people that went up there with you. That is true, is it not?

A. I believe it is.

Q. And then you went to the land office and filed on this land; you made a sworn statement, which I have shown you. Now, in that sworn statement you have said, and I think truthfully, Mr. Nibler, that at that time there was no agreement of any kind by which you were to turn this property over to anybody, I am speaking now of the first time, and that was exactly true, was it not, at that time? (Witness hesitates.) At the time you filed this first application in November, 1901, which you swore to before the receiver, you said this: "I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire of the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement was true at the time, was it not, Mr. Nibler? A. Yes, sir.

Q. And at the time you filed your first application you had had no talk with Wells at all?

A. No, sir.

Q. And you had had no talk with Pat Downs at that time, had you? A. I don't remember.

(Testimony of Lewis Nibler.)

Q. What is your best recollection?

A. I couldn't say for sure.

Q. You hadn't had any talk over this matter of timber lands with anybody except your friend Link, had you, and the people who went up with you?

A. That is all, I believe.

Q. Pat Downs wasn't in that party was he, or Wells? A. No.

Q. Then your best recollection is that you didn't talk with Downs at all until after you made your first application? Is that right?

A. I couldn't say for sure.

Q. Well, it seems as though you could remember, Mr. Nibler, just think back. You talked it over with Link and he suggested your going?

A. Yes, sir.

Q. And, at that time, you hadn't had any talk with anybody else about your going?

A. Not as I know of.

Q. You know whether you did or did not, don't you? You told Mr. Link you would go on a certain day, and you did go? A. Yes, sir.

Q. And it was Mr. Snow that located you?

A. Yes, sir.

Q. Up to that time you hadn't had any talk with Mr. Downs of any kind, had you?

A. Not that I know of.

Q. And then when you came back your papers were made out, and you went to the land office and filed this first paper? A. Yes, sir.

Q. Up to that time you hadn't had any talk with

(Testimony of Lewis Nibler.)

Wells or Downs either, had you?

A. I don't know.

Q. Can you remember of any?

A. No, sir, I can't.

Q. Can't recall any talk you had with them at all up to that time, can you?

A. I don't remember of any that I know of.

Q. And it is absolutely true, your statement there, Mr. Nibler, that at the time you filed your first paper you had no agreement of any kind or character with anybody by which anybody was to get any interest in the land? You were then applying to purchase. Isn't that true?

A. I think so.

Q. Up to that time no one had asked you to sell it, had they?

A. No, sir.

Q. And up to that time you hadn't offered it for sale to anybody?

A. No, sir.

Q. There had been no discussion up to that time between you and anybody else as to where you were going to get the money to prove up, had there? That talk was afterwards, wasn't it?

A. I know I was to get the money to prove up on it.

Q. That arrangement was after you made your first filing, wasn't it? Don't you know that for quite a long time after you had made your filing you didn't know yourself where you were to get the money to make your final proof with?

A. I wasn't sure.

Q. Don't you know you were quite uneasy for quite a long time there as to whether you were going to be able to prove up at all or not? Don't you re-

(Testimony of Lewis Nibler.)

member that? (Witness pauses.) See if I cannot refresh your recollection. Don't you remember you talked with Mr. Wells, after you made this first filing, about where you were going to get the money to prove up, or whether you could come through at all or not?

A. I was to get it from Wells to prove up.

Q. You found that out afterwards, but I mean don't you remember talking with Link after you made your filing about where he and you were to get the money to prove up, and before you had this talk with Wells? A. I don't remember it.

Q. Do you remember finally having a talk with John I. Wells about getting the money?

A. Yes, the day before I proved up.

Q. Had you any talk with him before that about it? A. No, sir.

Q. Had you had any talk with anybody else about it before that? A. I couldn't say.

Q. Was that the first time that you had talked with anybody about getting money to prove up on, the day you went to Wells? A. No, sir.

Q. Who had you talked with about it before?

A. I couldn't say. I knowed I was to get the money when I got ready to prove up.

Q. Who told you that?

A. Mr. Link, for one.

Q. Anybody else? A. I don't know.

Q. What did Mr. Link tell you?

A. He said whenever I got ready to prove up I could go to Mr. Wells and get the money.

(Testimony of Lewis Nibler.)

Q. And did you understand when you went to Mr. Wells to get the money that you were selling out to Mr. Wells and that he was paying part of the money so that you could prove up? Was that the way you understood it, that you were to make a profit of \$250? A. Yes, sir.

Q. And that \$250 was to be the market value of timber claims here over and above what it cost you. Was that it? A. Yes, sir.

Q. It was generally understood up and down the street here that timber claims were being bought at a price of about \$650 or \$750? A. Yes, sir.

Q. It was general talk here, wasn't it Mr. Nibler?

A. Yes, but I was to get so much money for it.

Q. And the expectation and information you had as to making \$250 by entering a timber and stone claim was your expectation and knowledge that you could sell it for that much more than it would cost you. Isn't that right? A. Yes, sir.

Q. And that was the only way you expected to make \$250, wasn't it? A. Yes, sir.

Q. You have already testified that at the time you made your original application on November 1, 1901, nobody had ever spoken to you and you never had spoken to anybody about buying that claim or selling it, and there was no agreement of any kind in writing or otherwise existing with anybody by which anybody else was to have any interest in your claim; at the time you made final proof and final receipt was issued to you, had anybody offered to buy it from you at that time? A. No, sir.

(Testimony of Lewis Nibler.)

Q. Had you ever offered to sell to anybody at that time, offered it for sale?

A. I never offered it for sale to anybody, only what the agreement was.

Q. What was the agreement?

A. That I was to get so much money.

Q. Was that the agreement made with Mr. Link?

A. No, sir.

Q. Made with whom?

A. I couldn't say who it was.

Q. You can't say who? A. No, sir.

Q. Mr. Nibler, wasn't it a fact that there was no such agreement in existence at all, but simply expected you could make that money from information you got on the street that those claims should be bought from the Government and sold at a profit? Isn't that a fact?

A. Yes, sir, I got so much money.

Q. Wasn't it a fact that you got that idea solely from what you people were selling them for, on the street, and you never had any agreement at all. Isn't that true?

A. I don't know. I can't say.

Q. Mr. Nibler, if you are testifying here to an agreement, we want that agreement. You say you don't know who you made it with. Now, was there an agreement or was it simply an understanding that you could sell it at a profit?

A. In one way it was a common understanding.

Q. Wasn't that all you had which led you to think you could make \$250? (Witness hesitates.) An-

(Testimony of Lewis Nibler.)

swer the question, Mr. Nibler.

A. I would like to but I don't want to say anything I don't know for sure.

Q. Well, you didn't have any agreement of any kind with anybody—you have already sworn to that two or three times—to sell this property to anybody; nobody had offered to buy it, but you say it was common knowledge here that there was a market price for timber claims and that they could be sold for so much profit. Now, I ask you whether or not any agreement was made with anybody by which you were to sell your land to them, and, if so, with whom? A. I don't know.

Q. Don't you know, Mr. Nibler, that you didn't have any agreement at all?

A. I am not sure of it.

Q. I think you can answer that question. Don't you know, Mr. Nibler, that it is a fact that you never had an agreement with anybody before you made your final proof by which you agreed to sell that land at any price? Isn't that a fact? (Witness pauses.) You can answer that.

The EXAMINER.—Can't you answer the question, Mr. Nibler?

A. I can't for sure; I don't know for sure.

Q. (By Mr. BUNDY Continuing.) You don't know for sure whether there was an agreement or not? A. No, sir.

Q. Do you know who you had an agreement with if you had one?

A. Well, I said once I had seen Mr. Downs.

(Testimony of Lewis Nibler.)

Q. Yes, but you said afterwards that you didn't see him until after you filed, and you wasn't certain you saw him at all. That is true now, isn't it? You are not certain now that you saw him at all, are you?

A. No, I ain't certain.

Q. If you had any agreement at all it was with Downs. Is that right?

A. Yes, sir.

Q. And you are not certain that you had one with him?

A. I am not sure.

Q. And if you didn't have one with Downs you didn't have one with anybody, did you? That is right, isn't it? You can answer that question, Mr. Nibler. If you didn't have an agreement with Downs, then you didn't have one with anybody, did you?

A. I guess not.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Nibler, you have spoken of some agreement or promise on the part of the district attorney that you should not be prosecuted for perjury. Who made that promise to you?

A. I don't know the gentleman.

Q. How long ago was it?

Mr. BUNDY.—It wasn't either of these gentlemen, was it?

A. No, sir.

Q. (By Mr. KEIGWIN, Continuing.) Was it Mr. Lingenfelter, the present district attorney?

A. I couldn't say. It was a dark complected man.

Q. What was the promise that was made to you?

(Testimony of Lewis Nibler.)

A. He said he wanted the truth; that was what they was after.

Q. And he promised that he wouldn't prosecute you? What did he say you had done?

A. He said they wouldn't bother us.

Q. What did he say you had done that he could bother you for? A. He didn't say.

Q. What did you think it was?

A. This land business.

Q. This particular entry we are talking about?

A. Yes, sir.

Q. Well, did he give you to understand that you had, or he thought you had, committed perjury in connection with that entry?

A. I don't know. He must have, I guess.

Q. That was your understanding of his idea?

A. Yes, sir.

Q. Are you aware that if you did commit perjury in that case the offense is barred by the statute of limitations now? A. I don't understand.

Q. You don't know whether you could be prosecuted now or not? A. I suppose I could.

Q. Do you think so? A. Yes, sir.

Q. You don't know that it is barred by limitations, do you?

A. I don't know, I done wrong, I guess. I suppose if they wanted to punish me they could do it.

Q. Now, Mr. Nibler, in what do you think you did wrong? A. Swearing falsely.

Q. What was the falsehood you swore to?

A. When I said I had the money when I went to

(Testimony of Lewis Nibler.)

prove up on that property.

Q. You didn't have the money at that time of your own? A. No, sir.

Q. How much money did you have, then?

A. I don't know; I don't remember.

Q. Did you have as much as a hundred dollars?

A. Yes, sir.

Q. Did you have \$300? A. No, sir.

Q. Did you have \$200? A. No, sir.

Q. Well, when you made this application, when you went out to look at the land, did you have enough money to pay for the land?

A. No, sir.

Q. Where did you expect to get the money to pay for it?

A. I expected to get it from Mr. Wells.

Q. Who had told you you could get it from Mr. Wells?

A. I forget who it was; it was just talk.

Q. You had information that you could get the money from Mr. Wells? A. Yes, sir.

Q. And it was your expectation that you would get the money from Mr. Wells and that you would then convey the land to him in consideration of his giving you the money? A. Yes, sir.

Q. And that was your intention at the time you made this application that Mr. Bundy has shown you? That was your intention before you went up to view the land, was it? A. Yes, sir.

Q. That was your intention at the time you went to the land office to make your filings, the first time

(Testimony of Lewis Nibler.)

you went to the land office? Was it, or was it not?

A. I knowed where I could get the money to prove up.

Q. Did you know of anybody else excepting Mr. Wells from whom you could get the money?

A. No, sir.

Q. And you were informed that you could get it from him? A. Yes, sir.

Q. And that you would be expected to convey the land to him? Was that your understanding?

A. That was my understanding; that I could get the money from Mr. Wells.

Q. And that you would convey the land to him for \$250 in excess of what it cost?

Mr. BUNDY.—Counsel for the defendants object as incompetent, irrelevant and immaterial; also as leading.

Q. Now, Mr. Nibler, will you answer that question?

A. I had the understanding that I was to get the money from him to prove up on and, after I had proved up on it, I was to turn the ground over to him.

Q. And get \$250 additional? A. Yes, sir.

Q. What do you understand by an agreement, Mr. Nibler? Do you understand that it has to be something in writing?

Mr. BUNDY.—That is objected to as leading.

A. I suppose so.

Q. Then when you testified here that you had no agreement to sell this land, you mean you had noth-

(Testimony of Lewis Nibler.)

ing in writing? A. No, sir.

Q. Is that what you mean when you say that you had no agreement?

A. I didn't have no papers to show for it.

The hearing was here adjourned at 4:40 P. M. until 10 o'clock A. M., Friday, February 5, 1909.

Court opened at 10 A. M., Friday, February 5, 1909, pursuant to adjournment, all parties being present.

[Testimony of Lewis Nibler, on Behalf of the Government (Recalled for Further Cross-examination).]

LEWIS NIBLER, recalled for further cross-examination, testified as follows:

Examined.

(By Mr. FRASER.)

Q. Now, Mr. Nibler, I think perhaps in a few minutes we can find out just what we want to know about this and just what you can tell us about it, just in a few words. Now, the first one that spoke to you in regard to this timber business was Gus Link, wasn't it?

A. Yes, sir, it was the talk.

Q. Is he any relation of yours?

A. Brother in law.

Q. What was his business at the time he first talked to you about it?

A. I think he was tending bar.

Q. In some saloon here in town? A. Yes.

Q. And did you just happen to go into the saloon, and did that conversation come up?

(Testimony of Lewis Nibler.)

A. Yes, sir.

Q. And there were a number of other people in there at that time? A. Yes, sir.

Q. And was there a good deal of talk around at the different saloons at that time about a chance to take up some timber land? A. Yes, sir.

Q. You weren't the only one present that he was talking to about this matter, were you, or was it general conversation in there?

A. Conversation on the streets.

Q. And in there? A. Yes, sir.

Q. Now, what did Gus say to you? Just give his words as near as you can.

A. He said he was going to take up a timber claim and wanted to know if I didn't want to go along?

Q. Did he say that he thought it would be a good thing for you to do—to take up a timber claim?

A. He didn't say it was a good thing.

Q. What else did he say, if you remember, at that time? A. I don't remember.

Q. Is that all that you can remember that he said at that time? A. I believe it is.

Q. And then when did you go up? Do you remember how long after that? Was it the next morning you started?

A. No, I don't think so.

Q. In a few days? A. Yes, sir.

Q. Now, when did you next talk to Link about it; on the road up there or before you went again at some other time? A. I don't remember.

(Testimony of Lewis Nibler.)

Q. You don't remember of any other conversation, do you? A. No, sir.

Q. Then you went with him up there, did you?

A. Yes, sir.

Q. And who did you see when you got up there at Centerville? Was that where you went to?

A. Yes, sir.

Q. That was your first stop, was it, from Boise?

A. Yes, sir.

Q. Did you stop at a hotel in Centerville?

A. It was the only one there was there.

Q. It was a hotel, wasn't it? A. Yes, sir.

Q. And you stopped over night?

A. Yes, sir.

Q. The next morning, what did you do?

A. We went up through the timber.

Q. Yourself and Gus Link, was that?

A. Yes, sir.

Q. And the others that went in the crowd?

A. Yes, sir.

Q. You got into the wagon and drove up to the timber? A. No, sir, we walked up.

Q. Who else went with you from Centerville up that wasn't in your crowd from Boise to Centerville? A. Why, Mr. Snow went up.

Q. He went all the way, didn't he?

A. Yes, sir.

Q. Did anybody else join you at Centerville, except your own crowd? A. I don't think so.

Q. Do you remember meeting Pat Downs up there? A. I believe I do.

(Testimony of Lewis Nibler.)

Q. Do you think you met him at Centerville?

A. No, sir.

Q. Whereabouts did you meet Mr. Downs?

A. On the road coming back.

Q. He was on the road coming where?

A. To Boise.

Q. After you looked at the land you met him on the road—

A. (Interrupting.) When we were going up we met him on the road.

Q. Whereabouts did you meet him, as near as you can tell? Was he coming to Boise while you were going up?

A. Yes, sir.

Q. Did you have any talk with him then?

A. No, sir.

Q. You didn't have any talk with Downs at the time you met him on the road? Then, you came back to Boise after looking at this land?

A. Yes, sir.

Q. How long were you in Boise before you filed this first application to purchase this tract of land in the land office at Boise? Was it the next day after you came back from this trip?

A. I think it was.

Q. What time did you get home that night from Centerville?

A. About nine o'clock at night.

Q. About what time the next day, if you remember, did you go up to the land office to file this paper?

A. I don't remember just when it was.

Q. Was it the next forenoon that you went up, the next morning after you got up and had your

(Testimony of Lewis Nibler.)

breakfast, or was it in the afternoon?

A. I couldn't say for sure.

Q. What is your best recollection?

A. I think it was in the afternoon.

Q. You think you went up after noon?

A. I think so.

Q. Did anyone go with you to the land office when you took this first paper up and filed, or did you go up alone and file it?

A. No; the other party went with me.

Q. Which went with you?

A. Link went with me.

Q. Did anybody go with you except Gus Link up here to the land office when you filed?

A. I don't know; I can't say.

Q. You don't remember of anybody, do you, except Gus Link? A. No, sir.

Q. Did you see Downs in the morning right after you came from Centerville, or not?

A. No, sir, I don't remember seeing him.

Q. Did you see him at all after you met him on the road until after you filed this paper in the land office? A. I don't think so.

Q. So that at the time you filed this paper in the land office, Plaintiff's Exhibit 17A, the first paper you took up that next day, you hadn't had any conversation with Mr. Downs, had you?

A. No, sir.

Q. How long after you filed this paper, as near as you can recollect, before you saw Mr. Downs to talk to about this at all; or did you ever talk to him

(Testimony of Lewis Nibler.)

about it?

A. I studied over last night; I don't think I ever had talked to him.

Q. After refreshing your memory you don't think you ever talked to Mr. Downs about this land?

A. No, sir.

Q. It is the best of your recollection at the present time that you didn't talk to Mr. Downs about this land?

A. I think it is.

Q. Now, then, in this Exhibit 17A, that you filed—at the time you filed these first papers in the land office then, Mr. Nibler, you hadn't any agreement or any contract to sell this land to anyone, did you? You hadn't told anybody that you would let them have this land, had you, at the time you filed these first papers?

A. I don't think I had.

Q. That is, the next morning. At that time you hadn't told anybody that they could have this land, had you?

A. No, sir.

Q. Or that they could have any interest in it, had you?

A. No, sir.

Q. And at that time you hadn't told anybody that they could have any interest in this land, had you, at the time you filed this first paper—at that time did you have any such agreement with any man that you can think of now that you told him that he could have any interest in this land that you filed on?

A. No, sir, I didn't tell nobody.

Q. And nobody had told you at that time that they would buy this land—at the time you filed this first paper?

A. No, sir,

(Testimony of Lewis Nibler.)

Q. Had anybody come to you and ask you to sell the timber on this land at that time?

A. No, sir.

Q. Had anybody ever asked to buy this land or to get an interest in it at any time before you went to Mr. Pritchard's office and turned it over to Pritchard?

A. Nobody asked me.

Q. Had you asked nobody else to buy the land before you went to Pritchard's office?

A. No, sir.

Q. The time you went to Pritchard's office was the first time you tried to sell this land, wasn't it?

A. Yes, sir.

Q. And he was the only man that seemed willing to buy it, as far as you know?

A. As far as I know.

Q. Now, when you got the money to prove up on from Mr. Wells, how long did you have this money before you took it up to the land office? How many days did you get it from Mr. Wells before you took the certificate from the bank—Did you put it in the bank the day you got it from Mr. Wells?

A. Yes, sir.

Q. What day did you take the certificate of deposit that you got from the bank and turn it over to the land office?

A. I think it was the same day.

Q. Then you got the money from Mr. Wells the day you made your final proof in the land office?

A. Yes, sir.

Q. Now, did anybody ever say anything to you

(Testimony of Lewis Nibler.)

about your coming here to testify in this case, Mr. Nibler, anybody? A. No, sir.

Q. Did anybody ever say to you that you shouldn't answer any questions that were asked you here, or anything of that kind?

A. Not here.

Q. Where was that? Answer that, and who was it that said that?

A. I said this morning he didn't just tell me so.

Q. What did he say? What was it that he said? Just state what it was. It isn't going to hurt you or me or anybody else. Just state what the facts are, Mr. Nibler. Say what it was, what they said, in regard to your not answering questions or anything of that kind in this matter. What was said about that, if anything, as near as you can recollect?

A. It was upstairs, I think, yesterday morning.

Q. In this building? A. Yes, sir.

Q. What did they say in regard to your not answering questions here that were asked you? Just state what it was. You have a right to state, Mr. Nibler. You needn't be afraid. There is nobody going to bother you about it. This is just a hearing and we are entitled to know what it was.

A. I want to get it right.

Q. Just as near as you can, what was said in regard to that matter?

A. Well, I couldn't say that the talk was just to me alone; there was several parties standing there.

Q. What was said, as near as you can recollect?

A. He told me to stay up there.

(Testimony of Lewis Nibler.)

Q. (By Mr. KEIGWIN.) Who said this?

A. That gentleman there, I believe (indicating Mr. Gordon).

Q. (By Mr. FRASER.) Mr. Gordon?

A. Yes, sir.

Q. (By Mr. KEIGWIN.) What did Mr. Gordon say?

A. He said that these fellows would question me up there. He said you can stay here and they will question you.

Q. (By Mr. KEIGWIN.) Who would question you?

A. The gentleman upstairs; he didn't say who.

Q. (By Mr. FRASER.) Do you know who he was?

A. No, sir.

Q. Did he question you up there?

A. Just looked over some papers.

Q. What did he say; anything about your answering questions here?

A. No, sir, not in here.

Q. That is as near as you can remember, is it, what took place?

A. Yes, sir.

Q. (By Mr. KEIGWIN.) As I understand it, Mr. Gordon, this gentleman on my right, asked you to remain upstairs and talk with someone who was assisting him in that room. Is that so?

A. I believe so.

Q. And this gentleman, with whom you were left, do you know his name?

A. No, sir.

Q. And he told you you would be put on the stand down here; he told you you would be asked to testify

(Testimony of Lewis Nibler.)

in this room, did he?

A. He said they would call me down here.

Q. Yes, and he told you to answer any questions that were put to you. I want to see if I understand it correctly.

Q. (By Mr. FRASER, Continuing.) What did he say? Anything about answering questions here or upstairs, Mr. Nibler?

A. He said I would have to answer them here just like I did upstairs.

Q. And you answered some upstairs to somebody?

A. Just a few. I looked over them and jogged my memory.

Q. Mr. Nibler, when we speak of an agreement to sell lands and dispose of timber here we mean an oral promise as well as a written agreement. An agreement can be oral, you know. I can agree by word of mouth to enter into a contract as well as by written agreement. Now, in regard to this land of yours, you hadn't any oral agreement with anybody to sell it to them, did you any man? In other words, did you tell any man at the time you filed this paper—had you told any man, either in writing or by word of mouth that you would let him have this land or any interest in this claim?

A. No, I don't think so.

Q. Can you name any man that you did tell that?

A. No, sir.

Q. Had any man asked you to give him any interest in this land at the time you went up and filed in

(Testimony of Lewis Nibler.)

the land office, or before? A. No, sir.

Q. As you before stated, you never agreed orally or in writing to sell to anybody till after you went to Pritchard? A. No, sir.

Q. And he was the first man, wasn't he, that you ever approached to buy this land?

A. Yes, sir.

Q. And he was the only man that ever offered, either orally or in writing, to buy it, wasn't he, so far as you know? Had any other man come and offered to buy this land from you?

A. No, sir.

Q. Then he was the only one, wasn't he?

A. Yes, sir.

Q. And there was no other agreement written or oral except that, was there? A. No, sir.

Q. As to giving anybody any interest in this land, or the timber. Isn't that right?

A. Yes, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Nibler, you were on the stand yesterday afternoon? A. Yes, sir.

Q. When adjournment was taken, were you not?

A. Yes, sir.

Q. You have been thinking over your testimony since yesterday afternoon, have you?

A. I thought over it last night some.

Q. By yourself? A. Yes, sir.

Q. Did you see Mr. Fraser last night?

A. I seen him on the street.

(Testimony of Lewis Nibler.)

Q. Did you see Mr. Bundy?

A. No, sir.

Q. The gentleman who is assisting Mr. Fraser?

A. No, sir.

Q. Did you talk to Mr. Fraser?

A. No, sir.

Q. Did you explain to Mr. Fraser last night or this morning that you had refreshed your memory about this matter?

A. No, sir.

Q. You simply thought it over by yourself?

A. Yes, sir.

Q. You didn't speak to anybody that you had changed your mind?

A. No, sir.

Q. And when you came on the stand this morning Mr. Fraser did not know that you had changed your mind?

A. No, sir.

Q. So you hadn't communicated to Mr. Fraser or anybody else that you had changed your testimony?

A. No, sir.

Q. You didn't speak to anybody at all about having changed your mind?

A. No, sir.

Q. So that Mr. Fraser had no way of knowing you had changed your mind since yesterday?

A. No, sir, I didn't speak to the gentleman at all.

Q. You had never spoken to Mr. Downs at all about selling this property, I believe?

A. No, sir, I don't think I did.

Q. Or to Mr. Wells?

A. No, sir.

Q. Did Mr. Downs ever tell you that if you would take up this claim there would be something in it for you?

A. No, sir.

(Testimony of Lewis Nibler.)

Q. He never told you that? A. No, sir.

Q. Did Mr. Downs ever tell you that if you would take up that claim they—meaning Mr. Downs and his associates—would see to it that you had money to prove up with?

A. No, sir, they never told me.

Q. Then, I understand that Mr. Pritchard was the first person that ever spoke to you about selling this property?

A. When I got the deed I took it up to Mr. Pritchard's office.

Q. Did Mr. Pritchard invite you to come there?

A. I don't think he did.

Q. Did he send you word that he wanted you to come there?

A. I don't remember of him doing it.

Q. Did anybody else tell you to go to see Mr. Pritchard to sell the property?

A. I don't remember.

Q. Then you think somebody may have told you to go to Mr. Pritchard? A. Yes, sir.

Q. But you don't remember who it was?

A. No, sir.

Q. If it had been Mr. Downs, would you remember? A. Yes, sir.

Q. It wasn't Mr. Downs? A. No, sir.

Q. It wasn't Mr. Wells? A. No, sir.

Q. Was it Mr. Kinkaid? A. No, sir.

Q. You don't know who it was, then?

A. No, sir.

Q. But you know it wasn't either one of those

(Testimony of Lewis Nibler.)

persons? A. Yes, sir.

Q. What did you say when you went to see Mr. Pritchard?

A. I told him I had a receipt for the land.

Q. What did he say as to that?

A. He made out some papers and I turned it over to him, and just signed them, and he give me the money.

Q. What did you tell him besides having the receipt; did you tell him you wanted to sell the land?

A. No, sir.

Q. You didn't tell him you wanted to sell the land? A. No, sir.

Q. Did he ask you how much you wanted for it?

A. Well, I knowed how much I was going to get.

A. And he knew too, did he?

A. Yes, I guess he did.

Q. He didn't ask you how much you wanted?

A. No, sir.

Q. And you didn't tell him?

A. No, sir.

Q. How much did he give you? A. \$225.

Q. Did he tell you why he kept \$25 out?

A. For location fees, I believe.

Q. Did he say anything to you about this money you had gotten from Mr. Wells?

A. I don't think he did.

Q. Was Wells there? A. No, sir.

Q. Did you ever pay Wells that \$400?

A. No, sir.

Q. Did he ever ask you for it?

(Testimony of Lewis Nibler.)

A. No, sir.

Q. Did you give a note for it when you got the money? A. No, sir.

Q. Did you see Mr. Wells and Mr. Downs last night? A. I see them on the street.

Q. Speak with them? A. No, sir.

Q. You didn't have any conversation?

A. No, sir.

Q. As I understand, your testimony this morning, in which you wish to correct your testimony of yesterday, is that you did not speak to Mr. Downs or Mr. Wells before you sold this land?

A. No, sir.

Q. You never had any conversation with either of them before you sold this claim?

A. I think not.

Q. And that is the point wherein you wish to correct your testimony of yesterday?

A. Yes, sir.

Mr. BUNDY.—I guess you didn't mean that just exactly that way before you sold the land. He didn't testify yesterday that he had any talk with Wells. He isn't changing his testimony, I am trying to say, about having a talk with Wells.

Q. (By Mr. KEIGWIN.) You mean that you want to change your testimony in this, that you didn't talk with Downs before you sold this land?

A. Yes, sir.

Q. Now, Mr. Nibler, yesterday morning when Mr. Gordon, the gentleman who is present here, spoke to you about answering questions, where did

(Testimony of Lewis Nibler.)

this occur? In the room upstairs, or in the hall?

A. In the hall.

Q. And you were standing there?

A. Yes, sir.

Q. Were you by yourself? A. No, sir.

Q. How many other people were there? Approximately five or six, or a dozen or fifteen?

A. No, sir.

Q. How many?

A. One, I believe. One or two, I couldn't say.

Q. And Mr. Gordon was coming down into this court at that time? A. Yes, sir.

Q. And what he said was this, "Would you gentlemen mind going into the room and telling the gentlemen in there what you know about this matter?"

A. He told me to stay there and they would ask me to come in.

Q. That was all there was to it?

A. I think so.

Q. You went into the room? A. Yes, sir.

Q. And there was a gentleman there who asked you some questions? A. Yes, sir.

Q. And you told him about what you said on the stand yesterday? A. Yes, sir.

Q. Did he show you a typewritten statement that you made in March, 1907? A. Yes, sir.

Q. Did you read it over? A. Yes, sir.

Q. You thought it was correct?

A. All but that one statement on there about me seeing Downs.

Q. That was the only point in which you were in

(Testimony of Lewis Nibler.)

error? A. I think so.

Q. Did you tell this gentleman that that was wrong? A. I don't think I did.

Q. You hadn't thought of it at that time?

A. No, sir.

Q. It wasn't until last night that it occurred to you that you had not seen Downs?

A. Yes, sir.

Q. You swore to this statement that he showed you, this typewritten statement?

A. I believe I did.

Mr. KEIGWIN.—Gentlemen, we have this typewritten statement of March, 1907, for your use, either to put in, or we will put it in, just as you suggest. We don't think it is material to go into evidence in connection with the testimony of this witness, but we tender it to the other side if they wish to make use of it for any purpose.

Mr. FRASER.—That is all, Mr. Nibler.

Mr. FRASER.—Counsel for the defendants move to strike out all of the testimony of the witness, Lewis Nibler, together with all the exhibits introduced in connection therewith, for the reason that the same is immaterial and incompetent and does not tend to prove any of the allegations of the bill of complaint; and the testimony of the witness shows that, at the time he entered the land and made application to purchase the same at the land office, and at the time of final proof, no violation of the law had been committed and that said entries were regular and legal.

Mr. KEIGWIN.—Counsel for the complainant repeat the statements heretofore made by them in response to similar motions previously made.

[Testimony of J. M. Neil, on Behalf of the Government.]

J. M. NEIL, being first duly called and sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your full name, Mr. Neil?

A. John M.

Q. What is your business?

A. I am now, I guess, a farmer or rancher.

Q. What was your business in 1902?

A. Coal and grain merchant.

Q. You made an entry under the Timber and Stone Act in 1902? A. Yes, sir, I did.

Q. Who first spoke with you about taking up a claim under the Timber and Stone Act?

A. Dockery told me there was some claims up there we could get.

Q. What is Mr. Dockery's name?

A. Ed J. Dockery, an attorney.

Q. What did Mr. Dockery say to you?

A. He said that he knew of some claims upon the north fork of the Boise that we could take that he thought it was worth while to look at. I got a team and he and I drove up together and took our wives, and we located.

Q. Did your wife locate, too? A. Yes, sir.

Q. Was anything said about the expense of this locating?

(Testimony of J. M. Neil.)

A. Yes, sir, he told me there was a locator up there; that would cost us \$25.00 location who would take us out and show it to us.

Q. Did he say who it was?

A. I don't know as I understood who it was at that time, but when we got up there *it* found it was Pat Downs.

Q. Did he take you out over the land and show it to you? A. Yes, Mr. Downs took us out.

Q. Did you pay him the money there or after you got back? A. After I got back.

Q. Where did you pay it to him?

A. As near as I can remember, I gave Dockery a check for \$50.00 to give to Downs probably ten days or two weeks after.

Q. Did you use your own money to make the final proof? A. I did.

Q. Did you have this of your own or did you borrow it?

A. I borrowed a portion of it or all of it, I don't know which.

Q. Where did you borrow it?

A. Bank of Commerce.

Q. Did you give security?

A. No, sir, personal note.

Q. Was it endorsed? A. No, sir.

Q. Any collateral put up?

A. None whatever.

Q. Do you remember how much that note was for?

A. Somewhere around seven or eight hundred dollars.

(Testimony of J. M. Neil.)

Q. And after you proved up how long was it before you sold the land?

A. It was several months, but I couldn't say exactly how long.

Q. Who did you speak with first about selling?

A. Really, I didn't speak with anyone; several spoke to me about it.

Q. Who spoke to you?

A. There was a man by the name of Darcy that was buying some claims and he asked me what I would take for it.

Q. Do you know how much he offered you?

A. He offered me \$800 a claim and John Kinkaid offered me \$850, and I sold both to him.

Q. And you made him a deed for it?

A. Yes, sir.

Q. And your wife deeded hers to him, too?

A. Yes, sir, at the same time.

Q. Did you make the arrangements yourself for your wife to buy this property and she just went along with you—I mean to locate and prove up? You furnished the money for her to prove up?

A. Yes, sir.

Q. And you made arrangements for selling hers the same as you did your own?

A. Yes, sir.

Q. The transactions you had with reference to yours you made for her, too?

A. Yes, sir.

Q. Did you ever make but the one deed for this property?

A. No, sir, I didn't.

Q. Did you ever take up any other claim under the Timber and Stone Act?

A. I never did.

(Testimony of J. M. Neil.)

Q. Is that the signature of your wife and yourself, and is that the property you conveyed (showing witness paper)?

A. That is my signature and I think it is hers. I would think that was the deed.

Q. How long before you sold this land did you talk with Mr. Pritchard about it?

A. I never talked with Mr. Pritchard about it.

Q. I mean Kinkaid?

A. Oh, just a few days. He came by my place or I saw him on the street, or something, and he told me he understood I had some claims and I told him I did and he made me an offer for them. Then within a day or two I went up to his office and closed up the deal with him.

Q. Did he pay you in cash or in check?

A. He paid me in check or draft or something of that kind. It wasn't in cash, I know.

Q. Do you know how much that draft was for, or check?

A. Whether he gave me one check or two I couldn't say.

Q. How much was it for?

A. It should have been \$1700 for the two claims. If it was one check it was that, and if two checks it was \$850 each.

Q. Did Mr. Kinkaid tell you who he was purchasing this property for? A. No, he did not.

Q. You read the deed?

A. I read the deed but I wouldn't say from memory just who it was made out to.

(Testimony of J. M. Neil.)

Q. Did you know that the consideration mentioned in the deed was \$1600?

A. No, I didn't, because I know that I got more than that for it.

Q. Did you notice that you were deeding the property to a man named Horace S. Rand?

A. I don't know that I noticed it but I know that the name is familiar, and it is more than likely that I did notice it at the time. In fact I knew that Kinkaid wasn't buying it for himself. I knew he was acting as agent for someone.

Q. And Mr. L. M. Pritchard swore you to the acknowledgment?

A. He was a notary, yes, sir, I believe.

Q. Were you and your wife together when this deed was signed? A. Yes, sir.

Q. Who made this deed out? Who drew the instrument?

A. I rather think Kinkaid did himself.

Q. Was it drawn the day you arrived there—the day you got your money?

A. Now, I couldn't say whether he had it already prepared when I went in or whether he prepared it after I went into his office, but the business was closed up in Kinkaid's office.

Q. What papers did you take there when you went to close this transaction up?

A. I took my final receipt from the land office; I hadn't received any patent at that time.

Q. (Showing witness paper.) I will ask you to look at these papers and see if they are the Register

(Testimony of J. M. Neil.)

and Receiver's certificate that were given you when you made your proof?

A. I couldn't say that it was.

Mr. GORDON.—We now offer in evidence the files in timber and stone entry No. 2218 and 2219 of John M. Neil and Maud Pitman Neil, together with the deed of John M. Neil and Maud Pitman Neil, to Horace S. Rand, dated February 11, 1903, conveying the north half of the northeast quarter and the north half of the northwest quarter of section twenty-five, and also lots one and two, and the south half of the northeast quarter of section four, all in township seven north of range eight east, Boise Meridian, the files to include the patent.

(Neil papers marked from 18A to 18K, inclusive.)

Mr. FRASER.—To the introduction of these papers counsel for the defendant objects for the reason that the same are incompetent, irrelevant and immaterial and do not tend to prove any of the allegations of the bill of complaint; no proper foundation has been laid for the introduction of said exhibits, and the evidence of the witness John M. Neil shows conclusively that, at the time of the application to purchase filed in the land office and entry of the land made and at the time of the final proof thereof, said entries were legal and valid and did not violate any provisions of the statutes of the United States.

Counsel for the defendants move to strike out all the evidence of this witness and the exhibits introduced in connection therewith for the same reason

that objection was made to the introduction of said exhibits aforesaid and on the same grounds.

[Testimony of Samuel Greig, on Behalf of the Government.]

SAMUEL GREIG, being first duly called and sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Samuel Greig?

A. Yes, sir.

Q. Mr. Greig, did you take up a claim under the Timber and Stone Act in December, 1901?

A. Yes, sir.

Q. I show you original statement and ask you if that is your signature? A. Yes, sir.

Q. I show you testimony of claimant and ask you if that is your signature?

A. Yes, that is my signature.

Q. Who was the first person that spoke with you about taking up one of these claims?

A. Mr. Pearson and Mr. West.

Q. What did they say to you about it?

Mr. BUNDY.—Counsel for defendants object on the grounds that it is immaterial, incompetent and irrelevant; also as calling for hearsay evidence.

A. He told me that he had taken up a timber claim and that I could take up one too if I wanted to. The money would be furnished; I could get the money to prove up with and, if I wanted to sell it, I could get \$250 for it if I wanted to dispose of it.

Q. What is your occupation, Mr. Greig?

(Testimony of Samuel Greig.)

A. Painting.

Q. What was it at that time? A. Painting.

Q. This conversation that you have just stated that you had with Mr. Pearson and Mr. West—Dean West?

A. Yes.

Q. That was before you had ever made any entries with reference to this land?

A. Yes, sir.

Q. Or had ever seen the land? A. Yes.

Q. Did you ever take up any other land under the Timber and Stone Act but this one piece?

A. No, sir.

Q. What was the next step in the acquiring of this property?

A. Mr. Pearson took me up and introduced me to Mr. Downs one night.

Q. Mr. Pat Downs?

A. Yes; and Mr. Downs told me there would be some parties going up to-morrow and that I could go, and I told him my wife was going too, and he said there would be room for us, or something like that.

Q. Did both of these gentlemen, Mr. Pearson and Mr. West tell you that the money would be furnished you with which to prove up?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial and calling for hearsay evidence.

A. Yes, I understand from conversation that I could get the money from John Wells.

Q. That was the first conversation you had with them?

A. Yes.

(Testimony of Samuel Greig.)

Q. Was anything said about a location fee at that time?

A. Yes, I understood that I had to pay \$25.00 to be located.

Q. So the morning after you saw Pat Downs you went up to look at this land? A. Yes, sir.

Q. Where is the land?

A. It is up near Placerville some place; beyond Pioneerville, I think that is it.

Q. Who was in the party with you that went?

A. There was Mrs. Pearson, my wife, and another gentleman and Pat Downs.

Q. How long did it take to go from here to Pioneerville?

A. We started off and put up in Centerville the first night and started off for the timber next day; got there next day.

Q. And that is when they showed you the land?

A. Yes, sir.

Q. Who located you? A. Pat Downs.

Q. Did he show you more than one piece of property?

A. He showed me my piece and he explained that my wife's was adjoining mine near there.

Q. He took you out and showed you a piece and said that was your piece? A. Yes, sir.

Q. Did he give you a description of that land there?

A. Yes, sir, he gave me a description in an envelope. As I understood, it was a description of the land.

(Testimony of Samuel Greig.)

Q. What were you to do with that envelope?

A. I was to give it to Mr. Wells.

Q. John I. Wells? A. Yes, sir.

Q. Had you ever met John I. Wells before that?

A. I don't think I had.

Q. When did you go to see Mr. Wells with that envelope? The day after you returned?

A. Yes, sir.

Q. Did your wife go along the same day?

A. I don't think she went to Mr. Wells with me. I think I went to Mr. Wells myself with that paper.

Q. Who prepared this paper for you?

A. Mr. West.

Q. Dean West? A. Yes.

Q. How did you go to Mr. West to have him prepare the papers?

A. It was understood that he understood more about it than I did myself.

Q. You went to see John Wells and took your description? A. Yes.

Q. And was Mr. Dean West at Wells' office?

A. No, I don't think he was.

Q. Did Mr. West tell you to go see Mr. West? To get him to draw this paper?

A. I don't think so. I went to Mr. West's house and had him make the paper at his house.

Q. You didn't leave your description, then, with Wells? A. I don't remember.

Q. Do you remember what you went to Wells' office for that day?

A. With that description of the land.

(Testimony of Samuel Greig.)

Q. Did you have any talk with him?

A. I can't remember what I said to him; I suppose it was that I had located on a timber claim and this was a description of the land, I suppose. I don't know exactly what it was.

Q. Did you ask him then, if he would furnish you the money to prove up? A. No, sir.

Q. Who did you pay the locating fee to? Mr. Wells? A. Yes.

Q. How much was that?

A. \$25.00 I think it was; I think it was something about that.

Q. Then you went to the land office and filed that paper? A. Yes, sir.

Q. When the time came to prove up did you have your own money to prove up with?

A. No, sir.

Q. Where did you get the money?

A. From Mr. Wells.

Q. Did you go to see him or did he go to see you?

A. I went to see him.

Q. You had never had any conversation until that time with Mr. Wells about him giving you the money to prove up? A. Not that I remember.

Q. And with reference to the day you proved up, when was it that you saw Mr. Wells to get the money?

A. I went the morning before I proved up to his office, the morning that I proved up.

Q. That was the first conversation you had with Mr. Wells about getting this money?

A. Yes, sir; that I remember.

(Testimony of Samuel Greig.)

Q. And how much money did he give you that morning? A. \$800.

Q. What did you say to Mr. Wells when you went after that \$800?

A. I can't remember what I said but it was something in substance that I wanted that money, I suppose; something like that.

Q. Did he know that you came there for; you told him your name? A. Yes, sir.

Q. And he gave you the \$800—an even \$800?

A. Yes.

Q. Where did he have that money?

A. In his desk, if I remember.

Q. In the desk or on the desk?

A. On the desk, I think it was.

Q. The money was there when you got there?

A. As far as I remember.

Q. Was it in an envelope or out in a pile?

A. I think it was in a pile.

Q. Paper money or gold?

A. It was paper money and gold.

Q. Did you have any understanding with West or Wells or Pearson as to what you were to say when you got to the land office as to whether or not that was your money?

A. They understood it was my money.

Q. Did anybody say anything as to what you were to swear to when asked whether that was your money? A. Not that I remember.

Q. Then you went to prove up, did you?

A. Yes, sir.

(Testimony of Samuel Greig.)

Q. And they gave you a receipt for the money you paid in? A. Yes, sir.

Q. And did your wife prove up at the same time?

A. Yes, sir.

Q. The same day; you went together?

A. Yes, sir.

Q. And they gave her a receipt too?

A. Yes, sir.

Q. What did you do with those receipts?

A. Brought them to Mr. Pritchard.

Q. Had you ever met Mr. Pritchard before?

A. No.

Q. Had you ever seen him before that you know of? A. No.

Q. Who told you to go to see Pritchard?

A. I can't remember who told me to go see Pritchard.

Q. You went directly from the land office, directly after proving up, to Mr. Pritchard's office?

A. Yes, sir.

Q. Who was in Mr. Pritchard's office when you arrived?

A. I don't remember whether there was anybody there.

Q. Was anybody there besides Pritchard?

A. I don't think so.

Q. What did you do when you got there?

A. I think I gave him the receipt I got from the land office and told him there was the papers I got from the land office.

(Testimony of Samuel Greig.)

Q. What did he say?

A. He started in to write out papers then.

Q. What happened next?

A. I think that is all he done then, was to write out some papers, and I think that is all we done that day.

Q. Did you and your wife sign any papers that day?

A. I couldn't say we did that day. I think we did but I ain't sure about that.

Q. Did he give you any money that day?

A. No, sir.

Q. Did he give you any money later?

A. Yes, sir. I got a notice from the land office some months after that to come up to the land office, and get my papers. I didn't get my papers the first time.

Q. And the day you got those papers did you go to see Mr. Pritchard again, and did he give you any money that day?

A. Yes, sir.

Q. How much? A. About \$250, I think.

Q. And then did you sign a deed there that day?

A. I think we signed that deed.

Q. Did you sign another deed subsequent to that?

A. After that I signed another paper; about a year after that.

Q. What was the occasion of your going there to sign the second paper?

A. I don't know exactly the reason, except that it wasn't made out right or it wasn't the deed they wanted. I ain't sure what it was.

(Testimony of Samuel Greig.)

Q. Who told you to go there the second time?

A. Mr. West, I think, told me to go there the second time.

Q. Is that the first deed you signed, or the second one, can you tell?

A. I couldn't tell, only from by signature.

Q. That is your signature? (Showing witness paper.)

A. That is my signature.

Mr. FRASER.—What is the date of that, Mr. Gordon?

Mr. GORDON.—Twenty-fourth of March, 1903.

Q. (Continuing.) Now, did you make the one deed for both pieces of property, or did you make out two deeds?

A. I think it was two deeds. I think my wife signed one and I signed one.

Q. Was this deed signed in blank, or were the names in the deed just as they are now when you signed?

A. I couldn't say.

Q. Did you know to whom you were selling this property?

A. No, sir.

Q. Did you notice that the consideration mentioned in this deed was \$2,000?

A. No.

Q. Now, was there any bargaining between you and Mr. Pritchard as to how much money you were to get for this property?

A. No, not that I can remember.

Q. You went in there and you gave him your receipt?

A. Yes, sir.

Q. There wasn't anything said about money at that time?

A. No, sir.

(Testimony of Samuel Greig.)

Q. At the time that you went to get the deed was anything said about money other than that you got \$250? A. No, not that I can remember.

Q. Did Mr. Pritchard ask you what you wanted for your property?

A. I can't remember whether he did or not.

Q. Did you tell him how much you thought you ought to have for the property?

A. I don't know that I did.

Q. Now, did this whole transaction turn out just exactly as you understood it was going to turn out when you had your talk with Mr. Pearson and Mr. Dean West?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial and asking for the conclusion of the witness. A. Yes, sir.

Q. Let me see if I understood you. When Dean West and Mr. Pearson first spoke to you, you understood that you were to locate on a piece of this property and that you were to get the money to prove up with from John I. Wells, and that in consideration of that you were to convey this property to whoever they told you to and get \$250 above all your expenses.

Mr. BUNDY.—Counsel for the defendants object as incompetent, irrelevant and immaterial and as a gross misrepresentation of the witness, assuming facts not in evidence at all.

Mr. GORDON.—I am asking him if that was his understanding.

A. It wasn't exactly that. I had the freedom to do what I wanted to as far as disposing of it was

(Testimony of Samuel Greig.)

concerned.

Q. Was it your understanding that they were to furnish you this money?

Mr. BUNDY.—Same objection as last above stated.

Q. Did you understand that they were to furnish the persons to whom you were to dispose of it to, if you wanted to dispose of it? A. No.

Q. Did you have the money with which to purchase this property when you went there to locate?

A. No, sir.

Q. And was it your understanding that they were to furnish you this money to pay for this property, and that you were to be under no obligations to convey the property to them?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial and asking the witness for a conclusion and his understanding and not based on the evidence. A. Yes, as I understand it.

Mr. BUNDY.—And objected to for the further reason that it assumes an agreement or understanding that they were to furnish any money, or anybody was to furnish any money. There is no such evidence from the witness. The witness testified that he was told that he was to get the money from Wells.

Q. Did you pay any interest to Wells for this money? A. No, sir.

Q. Was there any understanding when you got it when you were to repay it?

A. I signed a note for it when I got it.

Q. Did you ever get the note back?

(Testimony of Samuel Greig.)

A. Yes, sir, Mr. Pritchard showed me the note in his office and tore it up.

Q. Was time specified in that note when you were to repay this money?

A. I couldn't say; I don't remember.

Q. When did you tell Wells you would pay him this money?

Mr. FRASER.—The note is the best evidence.

Mr. GORDON.—He said he tore it up.

Mr. FRASER.—Was it six months after date, or what?

The WITNESS.—I don't remember.

Q. (By Mr. GORDON, Continuing.) When were you to pay the money?

A. I can't remember, unless it was wrote on the note.

Mr. GORDON.—We offer in evidence the sworn statement of Samuel Greig, dated December 7, 1901; the testimony of the claimant, dated February 21, 1902; the cross-examination thereto; the receiver and register's certificates, dated July 1, 1902; the deed of Samuel Greig and his wife Sarah Greig, to A. E. Palmer, dated March 24, 1903, and certificate copy of patent, dated January 28, 1904, and the certificate of recordation, embracing lot four of section one, and lots one, two and three of section two, and south half of the northwest quarter, and the south half of the northeast quarter of section two, township seven north of range five east, Boise Meridian. I think the deed includes the property of his wife also. (Marked Plaintiff's Exhibit No. 19A to

(Testimony of Samuel Greig.)

19H, inclusive).

Mr. FRASER.—To the introduction of these exhibits, and all of them, counsel for the defendants object for the reason that the same are incompetent, irrelevant and immaterial and do not tend to prove any of the allegations of the bill of complaint. No foundation has been laid by the testimony of this witness for their introduction. The testimony of the witness shows that at the time he entered the land and made application to purchase the same at the land office and at the time of final proof the entries were legal and not in violation of any law of the United States or regulations of the department.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Greig, you are of Scotch descent, are you not? A. Yes, sir.

Q. And have you some friends here in the city who came here with you—other Scotch people?

A. Yes, sir.

Q. Mr. and Mrs. Pearson? A. Yes, sir.

Q. Any others?

A. Yes, sir, my wife's sisters.

Q. Now, did you live up in the neighborhood with Mr. Pearson and Mr. West in 1901?

A. Yes, sir.

Q. You were neighbors, were you not?

A. Yes, sir.

Q. And in that neighborhood in 1901, and at the time you made this entry, was there more or less talk among your neighbors and yourselves about these

(Testimony of Samuel Greig.)

timber entries, and the opportunities to get them and sell them at a profit? A. Yes, sir.

Q. It was discussed generally between you, was it? A. Yes, sir.

Q. And did this information which Mr. West and Mr. Pearson gave you at the time they spoke to you come up in just that way—by visiting back and forth in each others' houses?

A. Yes, and working with them.

Q. You didn't understand that they were buying land or locating people themselves, did you?

A. No, sir.

Q. They were in the same condition as you, I believe? A. Yes, sir.

Q. So it was just neighborly discussion as to whether or not it would be a good thing to go up there and get some land and sell it? A. Yes, sir.

Q. You said the first one that spoke to you was Mr. Pearson and Dean West, and one of them said to you that if you wanted to dispose of the land you could get \$250 over and above what it cost you. Which one was it that told you that, or was it just in the discussion?

A. It was just in the discussion.

Q. Was it generally understood by you and those who talked with you at that time that there would probably be buyers for the land—a market for it at some price? A. Yes, sir.

Q. And that was the general opinion among you people there, that you could sell it for at least \$250 more than it cost you? A. Yes, sir.

(Testimony of Samuel Greig.)

Q. That is the only way you had in your mind, Mr. Greig, that you could make \$250, by selling the land? A. Yes, sir.

Q. You didn't understand from anything anyone told you that you had to sell the land?

A. No, sir.

Q. You supposed if you entered it you could keep it until you got ready to sell it? A. Yes, sir.

Q. And you could sell it to anybody that would pay you the most for it? A. Yes, sir.

Q. What was said at this time about getting money to prove up on, and who said it, if you remember?

A. Mr. West and Mr. Pearson and them that was talking around.

Q. Did they tell you, Mr. Greig, that if the time came to prove up and you didn't have the money that you could borrow from Wells, or did they tell you that Wells was buying land and you could sell it to him? Which? Or did they say either one?

A. I don't know that they said anything particular about that.

Q. They simply said that it was understood that you could get the money to prove up?

A. Yes, sir.

Q. You hadn't had any talk with Wells before that? A. No, sir.

Q. Never did know the man? A. No, sir.

Q. Never did have a talk except the day before you proved up?

A. Had a talk before when I gave him the de-

(Testimony of Samuel Greig.)

scription of the land and paid my location fee.

Q. The first talk you had with Wells about getting money to prove up on was, I think you said, the day you proved up? A. Yes, sir.

Q. Now, I think you said Mr. Pearson introduced you to Pat Downs a day or two after you had this talk and had concluded to go? A. Yes, sir.

Q. You understood that Mr. Downs was in the business of locating people? A. Yes, sir.

Q. And you understood that was a regular established business here, locating people, and getting so much for each person, was it not? A. Yes, sir.

Q. Who was it told you what you would have to pay Mr. Downs?

A. I think it was Mr. Downs himself. I am pretty nearly sure it was Mr. Downs.

Q. You got a livery rig, did you?

A. Yes, sir.

Q. Who paid for the livery rig?

A. I paid my part; Mrs. Pearson paid her part, and the other gentlemen.

Q. When you got up to Pioneerville you had to pay a hotel bill, I suppose? A. Yes, sir.

Q. And you each paid your own?

A. Yes, sir.

Q. And Mr. Downs took you out and showed you over the land you could take if you wanted to?

A. Yes, sir.

Q. After Mr. Downs had pointed out this piece of land which he said was vacant, and which he said you could enter if you wanted to, he gave you some num-

(Testimony of Samuel Greig.)

bers or a description of the land in an envelope, did he? A. Yes, sir.

Q. At that time did you have any talk with Mr. Downs about what you were going to do with the land? A. No, sir.

Q. Or Mr. Downs didn't have any talk with you?

A. Not that I remember of.

Q. He didn't offer to buy it and you didn't offer to sell it? A. No, sir.

Q. You got down to Boise rather late in the evening, I suppose? A. Yes.

Q. And did Mr. Downs tell you to take this envelope to John I. Wells? A. Yes, sir.

Q. Did he tell you to pay the location fee to John I. Wells?

A. I don't know whether he told me that or not.

Q. You did take the paper to Wells?

A. Yes, sir.

Q. Did he tell you to pay the location fee?

A. I think I understood I was to pay him.

Q. Did you have any other business with Mr. Wells on that day except to pay him the location fee and show him these numbers?

A. That is all.

Q. Did he make out any papers for you?

A. No, sir.

Q. He simply took your location fee and that was all he did? A. Yes, sir.

Q. Then you proceeded to Dean West's house?

A. Yes, sir.

Q. Because you thought he knew better how to

(Testimony of Samuel Greig.)

make out these papers? A. Yes, sir.

Q. Did he have the papers there or did you go out and get them? A. I went and got them.

Q. Where did you get them?

A. At the land office.

Q. After Mr. West made out the papers you went to the land office? A. Yes, sir.

Q. Who went with you?

A. My wife, and I think Mrs. Pearson went.

Q. On arriving at the land office you filed that paper, did you? A. Yes, sir.

Q. Did you pay a fee there? A. Yes, sir.

Q. Then they told you you would have to advertise? A. Yes, sir.

Q. You had to pay an advertising fee?

A. Yes, sir.

Q. Did you pay that at that time?

A. Yes, sir.

Q. This money was paid out of your own earnings, was it? A. Yes, sir.

Q. You didn't borrow it from anybody?

Q. The money you had saved from your labor, and you paid your wife's and your share?

A. Yes, sir.

Q. Now, Mr. Greig, at the time you filed this first paper that I speak about and paid your advertising fee had anybody ever asked you to sell that land to them? A. No, sir.

Q. Had you ever promised in writing or by word of mouth that you would sell it to anybody?

A. No, sir.

(Testimony of Samuel Greig.)

Q. At the time did anybody, any person, any firm, or any corporation have any interest in the land you were then applying to purchase or in the timber upon that land? A. No, sir.

Q. In the sworn statement you made that day you testified as follows: "I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was absolutely true, was it?

A. Yes, sir.

Q. After you had made this application, filed this paper I speak of, Mr. Greig, did you do anything then until about the time of final proof?

A. No.

Q. Didn't negotiate with anybody during that time about selling or trying to sell it, did you?

A. No, sir.

Q. On the very day I think you said of final proof, you went to John I. Wells' office, did you?

A. Yes, sir.

Q. And while there you borrowed \$800 for yourself and wife and gave him the note you have testified to? A. Yes, sir.

Q. And then you took the money you borrowed from him to the land office and got a certain receipt?

A. Yes, sir.

Q. Up to that time had you had any talk with anybody about selling that land? A. No, sir.

(Testimony of Samuel Greig.)

Q. Were you at liberty at that time to sell it to whoever you desired to, or whoever would pay you the most for it? A. Yes, sir.

Q. If you had sold it to any other person, you expected to pay Mr. Wells back his money?

A. Yes, sir.

Q. But there was no agreement or anything on your part, obligating you to sell it to Mr. Wells or Mr. Pritchard or anyone they deprented?

A. No, sir.

Q. When you paid your \$800 into the land office, they gave you a receipt for your money?

A. Yes, sir.

Q. Did you keep that?

A. I can't remember.

Q. But anyway, in the course of a few months after that, you got notice that your proof had been allowed and final receipt was ready for you?

A. Yes, sir.

Q. Then you went to the land office and got your final receipt? A. Yes, sir.

Q. Then you were in shape to legally and properly sell that land? A. Yes, sir.

Q. After you got your final receipt, then you felt that you did have a right to sell it? A. Yes, sir.

Q. Did you want to sell it? A. Yes, sir.

Q. Was it generally known here and talked among your neighbors and friends that a man by the name of Pritchard was buying land here?

A. Yes, sir.

Q. You were asked the question as to why you

(Testimony of Samuel Greig.)

went to Pritchard. I will ask you if it isn't true that it was generally known that Pritchard was buying land and he was the only one that was buying land? A. Yes, sir.

Q. That is the reason you went there?

A. Yes, sir.

Q. That is the sole reason you went there?

A. Yes, sir.

Q. You were also asked the question if there were any negotiations as to what you would get, and you said there were not. I will ask you if it wasn't generally understood at that time that the price Mr. Pritchard was paying was \$650. That is a fact, isn't it? A. Yes, sir.

Q. So you knew, when you went there to sell to him, that you would get \$650, less the \$400, leaving \$250 for yourself? A. Yes, sir.

Q. And after you went there the money was paid you? A. Yes, sir.

Q. That is the reason there wasn't any negotiations, because it was understood that that was the universal price they were paying, and that Mr. Pritchard was the only man in the market to buy it?

A. Yes, sir.

Q. At that time, the time you sold, Mr. Greig, did you know of anyone else here that was buying timber?

A. No, I didn't know of anybody else.

(Witness excused.)

Court adjourned until 2 P. M. Friday, February 5, 1909.

Court opened pursuant to adjournment at 2 P. M. Friday, February 5, the examiner and counsel for the respective parties being present in court, and the following proceedings were had and the following testimony taken, to wit:

[Testimony of Mrs. Sarah Greig, on Behalf of the Government.]

Mrs. SARAH GREIG, being first called and sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your full name is Mrs. Sarah Greig?

A. Yes, sir.

Q. And you are the wife of Samuel Greig?

A. Yes, sir.

Q. Mrs. Greig, did you make an entry in the land office under the Timber and Stone Act in 1901, December 7?

A. Yes, sir.

Q. I will ask you to see if that is your signature? (Showing witness paper.)

A. Yes, that is my signature.

Q. And that is your signature to the testimony which you gave? (Showing another paper to witness.)

A. Yes, sir.

Q. The first paper was the sworn statement and the other one was the testimony given before the land office. Who first spoke with you about taking up a timber and stone claim?

A. Mr. Greig.

Q. What did Mr. Greig say to you?

Mr. BUNDY.—Objected to as incompetent, ir-

(Testimony of Mrs. Sarah Greig.)

relevant and immaterial and calling for hearsay evidence.

A. He just told me that I could take up a timber claim if I wanted to.

Q. Did he tell you what you were to do to take up this timber claim?

A. He told us what we would have to do.

Q. What did he say?

A. He told us if we wanted to, we could take up a claim.

Q. Did he tell you how much you could make out of it?

A. He told me we could make \$250 out of it.

Q. Did he tell you who to go to see?

A. I don't remember.

Q. Did you go up? A. Yes, sir.

Q. Who with?

A. Mr. Greig, Mrs. Pearson and another gentleman.

Q. Do you remember who located you?

A. Yes, sir.

Q. Who? A. Patrick Downs.

Q. Had you ever met Patrick Downs before?

A. Yes, sir.

Q. In locating you, how many pieces of land did he show you, one or more?

A. He just showed us one, as far as I remember.

Q. Just pointed out one as your piece of property that you were to take? A. Yes, sir.

Q. How near was that to your husband's, do you remember?

(Testimony of Mrs. Sarah Greig.)

A. I think it must have been alongside of it.

Q. How long after your husband spoke with you did you go to view the land?

A. I think about three days.

Q. Do you remember who you saw with reference to this when you returned from looking over this land? A. No, sir.

Q. Did you see anybody about it?

A. No, sir.

Q. Where did you get this paper that you filed, the sworn statement?

A. I think either Mr. West or my husband.

Q. Do you know whether that is in your husband's writing, or whether Mr. West drew it?

A. That is Mr. West's.

Q. That is Mr. Dean West? A. Yes, sir.

Q. Did you have any talk with him about this land? A. No, sir, I didn't have any.

Q. Did you have the money with which to make final proof when you entered this land?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. You mean to file on it?

Q. Yes.

A. No, we didn't have the money; we just had the location fee.

Q. Before you filed on this land did you know where you were to get the money with which to prove up?

A. No, but I understood where we were going to get it.

(Testimony of Mrs. Sarah Greig.)

Q. Where did you understand you were going to get it?

Mr. BUNDY.—Objected to as incompetent, irrelevant, and immaterial.

A. Mr. Greig said he would see about the money.

Q. Did he tell you whom you were going to get it from? A. Not that I remember.

Q. Do you know where he did get the money from? A. Yes, afterwards.

Q. Who from? A. Mr. Wells.

Q. John I. Wells? A. Yes, sir.

Q. You did get the money to prove up with. Do you remember how much it was?

A. Yes, it was \$400.

Q. And the day you got that did you go to the land office?

A. Yes, just right away.

Q. And you made your proof?

A. Yes, sir.

Q. Well, did you see anybody with reference to selling this land about that time?

A. Yes, sir.

Q. How long after that was it that you sold the land? A. About six months.

Q. Who did you sell it to?

A. I don't know who they were.

Q. In whose office did you sell it?

A. Pritchard's.

Q. You went there did you? A. Yes, sir.

Q. Who directed you to go to Mr. Pritchard's office? A. Mr. Greig.

(Testimony of Mrs. Sarah Greig.)

Q. When you went to Mr. Pritchard's office, what did you do there?

A. I signed up some papers there.

Q. Do you know what the papers were that you signed up? A. No, sir.

Q. Did you get any money there that day?

A. Yes, or six months after we got it.

Q. How much did you get? A. \$250.

Q. Mrs. Greig, when this matter was first brought to your attention, what was your understanding as to what you were to do with this property when you proved up?

A. It was my understanding that we would go right through with the deal; that we would get the money,—get \$250 to the good.

Q. Was it understood that you were to make this entry; that the money was to be furnished you, and that you were to convey the property to some one whose name you didn't know, and get \$250 above all expenses? A. Yes, sir.

Q. That was what was given you to understand when the matter was first brought to your attention?

A. Yes, sir.

Q. I don't guess it is necessary for me to say that that is her signature to the deed but— That is your signature? A. Yes, sir.

Q. And that is the paper you signed in Mr. Pritchard's office?

A. I suppose so. I don't know.

Q. Did you sign but the one there?

A. That is all I remember doing.

(Testimony of Mrs. Sarah Greig.)

Mr. GORDON.—This deed has already been offered in connection with Mr. Greig's papers.

Q. (Continuing.) When your husband first spoke to you about taking up this claim, do you remember him saying that Mr. Downs would take you up to see this property? A. Yes, sir.

Q. And that when you came back Mr. Wells would provide the money?

A. Yes, I understood that.

Q. Did Mr. Greig say that? A. Yes, sir.

Q. And after that it would all go through and you would get \$250? A. Yes, sir.

Q. That was before you went to see the land?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the sworn statement of Mrs. Greig, dated December 7, 1901; her testimony before the land office dated February 21, 1902; the cross-examination of the claimant attached; the receiver and register's receipts or certificates, dated July 1, 1902; and the deed which she has just identified (already offered in connection with Mr. Greig's papers) and the patent to the south half of the northwest quarter, and the south half of the northeast quarter of section 2 in township seven north of range five east, Boise Meridian. (Papers marked from 20A to 20H, inclusive.)

Mr. FRASER.—We stipulate that this objection which I am making to all these exhibits shall be considered as made to all exhibits in this case, and the same offer you make will be considered as made.

Mr. KEIGWIN.—It is stipulated that the defend-

(Testimony of Mrs. Sarah Greig.)

ants make the same objection, and the complainant makes the same statement as heretofore made in connection with others.

Q. (By Mr. GORDON, Continuing.) I will ask you, Mrs. Greig, if you remember making a deed the first time you went to Mr. Pritchard's office, and then later, about six months afterward, you were asked to go there and make another deed?

A. Yes, sir.

Q. Was any reason given you for making the second deed, that you remember?

A. No, none that I remember.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Greig, you said your husband was the first one that spoke to you about making a timber and stone entry?

A. Yes, sir.

Q. Was it what he told you that made you go and make the entry?

A. Yes, sir.

Q. Did anybody but your husband ever ask you to make a timber and stone entry?

A. No, sir.

Q. Did you ever talk to anybody except your husband as to the amount of money you could make by making a timber and stone entry?

A. No, sir.

Q. Now, you told Mr. Gordon when he asked you one question, that at the time you made this entry you had a kind of an understanding that you could make \$250?

A. Yes, sir.

(Testimony of Mrs. Sarah Greig.)

Q. Was that understanding based upon what your husband told you?

A. Partly from what I heard from other one's say about it.

Q. Did your husband tell you that it would cost you about so much to make the entry; then when you had the final receipt you could sell it so that you could make a profit of \$250?

A. Yes, sir.

Q. You wasn't working for anybody for wages when you made that entry?

A. No, sir.

Q. You wasn't making that entry for anybody but yourself, was you?

A. No.

Q. At the time you went to the land office and made your first entry you were making it entirely and solely for your own use and benefit, were you not?

A. Yes, sir.

Q. Did anybody else have any interest in the land you were going to get?

A. Not that I know of.

Q. Had you offered to sell it to anybody?

A. No, sir.

Q. In fact, you had had no talk with anyone up to that time except your husband, that you have told us about?

A. That is all.

Q. Did you understand, when you made the entry, that you had to sell it to any one person?

A. No, sir.

Q. Did you understand you could sell it to whoever would give you the most for it?

A. Yes, sir.

(Testimony of Mrs. Sarah Greig.)

Q. You did understand that the regular price for timber claims was about \$650?

A. Yes, sir.

Q. And that the regular cost was about \$450?

A. Yes, sir.

Q. So that you could make, by exercising your right, less what you had to pay for the locating fee, \$250?

A. Yes, sir.

Q. You did pay a locating fee to Mr. Downs, did you not?

A. Yes, sir.

Q. Mr. Downs was engaged at that time in locating people for pay, was he not?

A. Yes, sir.

Q. And Mr. Downs, when he located you, didn't tell you that you were locating it for anybody but yourself, did he?

A. No, sir.

Q. And you never had any thought, when you went to the land office and swore that you were making this entry for yourself and nobody else, and nobody else had an interest in it, you told the exact truth did you not?

A. Yes, sir.

Q. Calling your attention, Mrs. Greig, to this first paper you signed, dated December 7, 1901, which you signed and swore to before Mr. Garrett. In that you said this: "I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was exactly true, was it?

A. Yes, sir, that was true.

(Testimony of Mrs. Sarah Greig.)

Q. So far as this money procured from John I. Wells to prove up on was concerned, you personally, I think, had nothing to do with that at all?

A. No, sir.

Q. Your husband, as you understood it, borrowed the money from Mr. Wells, gave a note for it and, when the land was sold, paid Mr. Wells back?

A. So I understood it.

Q. So far as selling the land, taking it up with Pritchard, I believe your husband conducted that for you too?

A. Yes, sir.

(Witness excused.)

[Testimony of Clifton C. Blevin, on Behalf of the Government.]

CLIFTON C. BLEVIN, being first duly called and sworn testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Clifton C. Blevin?

A. Yes, sir.

Q. Mr. Blevin, you took up some land under the timber and stone act on September 16, 1902, did you?

A. Yes, sir.

Q. I will ask you if this is your signature to the sworn statement that you made when you first made application to enter that land? (Showing witness paper.)

A. Yes, sir, that is it.

Q. And that is your signature to the statement made when you testified before the land office?

A. Yes, sir.

Q. And are these the receipts that were given you

(Testimony of Clifton C. Blevin.)

when you paid your money into the land office?

A. Yes, sir, the first one was; the second one I never saw before.

Q. Mr. Blevin, who first spoke with you about taking up a timber and stone claim?

A. Henry Rice.

Q. What were you doing at that time? What was your occupation at the time you took up this claim?

A. I was working at the carpenter trade then.

Q. What did Mr. Rice say to you when he approached you with reference to taking up a timber claim?

A. He said there was some timber land up there above Idaho City that was being taken up and that several had taken up claims there, and wanted to know if I wanted to take up one of the claims, and I didn't give him any decisive answer at that time, and I told him I would see about it. I think it went on for several days, and finally we got to talking about it later on and he had spoken to me about what we could do up there—what we could do with the claims and what other entrymen were doing.

Q. What did he say could be done with the claim?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial and calling for hearsay evidence.

A. He told me that this timber land was being bought and that I could dispose of it when I proved up on it.

(Testimony of Clifton C. Blevin.)

Q. What did he say to you about money at that time?

A. He said he thought that I could get the money to prove up on, but I had to furnish my own money for filing and to pay the locator.

Q. When he first spoke with you about this, did he say you could make a piece of money out of it easily?

A. Yes, sir.

Q. Did he tell you who to see about taking up one of these claims?

A. I don't know as he did the first time I saw him but later on he did.

Q. Who did he tell you to go to see?

A. I think he took me up to Wells office.

Q. John I. Well's office?

A. Yes, sir.

Q. Did you see Mr. Wells?

A. I did.

Q. Well, what occurred between you and Mr. Wells at his office?

A. Rice took me up there and introduced me to Wells. There was a party going up and Wells wanted to know if I wanted to go up and take a claim and I told him yes. So they told me to be there the next morning—I believe the team was going—so I went up the next morning. I believe it was a day or two afterwards; it wasn't very long.

Q. Who went up with you? Who made up the party?

A. A party by the name of Thompson and his wife, and there was a painter—I don't remember his name—and a young fellow that worked out here at the vitrified brick plant.

(Testimony of Clifton C. Blevin.)

Q. Was Mr. Greig and his wife along with that party?

A. No, I don't think they were. No, I know they wasn't. We passed parties coming back going up, but I don't know who they were.

Q. Who located you on the land?

A. Pat Downs.

Q. How many claims did Mr. Downs show you?

A. He showed me only one, for mine.

Q. Did he take you over the land and show you the corners?

A. Yes, sir; as near as I can remember, the way the land laid was on top of the mountain and he just pointed out how the land lay. I didn't go over the whole 160.

Q. That was the only claim he showed you?

A. Yes, he didn't give me any to pick from. He just took us up there and left us there and took Thompson and his wife, I think, farther over.

Q. Where did you get the description of that property? A. From Pat Downs.

Q. Did he give it to you there? A. Yes, sir.

Q. Did he tell you where to take that description?

A. I don't remember whether he told me where to take it or whether it was I got it afterwards after I came down; I don't remember that.

Q. Who did you see about it after you came back? Did you go to Mr. Wells' office and see him again?

A. No, I don't think I did. If anyone I think it was Henry Rice, that took me up to a notary and had the papers made out.

(Testimony of Clifton C. Blevin.)

Q. Who was this notary?

A. I am not positive, but I think it was Kinkaid or Pritchard, I don't know which.

Q. Do you know both the men?

A. Yes, but I don't know which was which.

Q. It was one or the other? A. Yes, sir.

Q. Do you know where the office was he took you to,—what building?

A. If I recollect right, it was one of the buildings on the west side of Main street, on Eighth.

Q. Do you remember the name of the building?

A. No, I do not. I think it was on Eighth street, but I am not positive about that.

Q. You didn't have the money at that time to prove up with? A. I did not.

Q. When it came time to prove up, did you make any effort to get it? A. Yes, sir.

Q. Where did you go get it?

A. I don't remember now. There was a party here that had been working up in Atlanta—no, he had been up in Thunder Mountain, I believe, and I was going to try and get the money from him, but in the meantime he had invested in some lots and didn't have any.

Q. Did you speak with Rice about this money?

A. Yes, sir.

Q. What did he say?

A. He said he would try and get it for me.

Q. Did he get it for you?

A. No, sir, not at that time.

Q. What happened after that, did you see Wells

(Testimony of Clifton C. Blevin.)

about it? A. I did not.

Q. Did you see Downs?

A. No, sir. When it came time for me to prove up I was unable to get the money and I spoke to Rice about it to see if he couldn't get it for me, and he told me they was short of funds, or something; that they couldn't raise the money—whoever these people were. So I went to the land office and Mr. Garrett told me I would have to re-advertise; would have to go up and visit the land again and come back and re-advertise.

Q. You did that? A. I did.

Q. In the first instance, did Rice tell you where you could get that money to prove up with?

A. No, sir, he did not.

Q. Then you did get the money afterwards?

A. Yes, sir, I did.

Q. Who did you get it from?

A. I got it from Henry Rice.

Q. And proved up? A. Yes, sir.

Q. Did Rice have anything to say to you about what you should say when asked at the land office where you got that money?

A. Why, yes, he told me I should say it was my own,—that it was my money.

Q. (By Mr. KEIGWIN.) Did he tell you you had better put it in a bank over night?

A. Yes, sir; which I did.

Q. (By Mr. GORDON, Continuing.) Did you draw it out by check?

A. No. They just gave me a deposit, certificate

(Testimony of Clifton C. Blevin.)

of deposit, and I went up next morning and got it.

Q. What did Rice tell you to do with the receipt when you got it?

A. He told me when I got the receipt that I could take it up to Pritchard's office and get my money.

Q. Did you take it up to Pritchard's office?

A. Yes, sir.

Q. Was this the first time you saw Pritchard?

A. I am under the impression I only went up once, when I got the receipt from the land office.

Q. This man you went up to see the second time was the man that drew your papers in the first instance?

A. Yes, sir.

Q. Did you have any talk with him about selling this land?

A. No, sir.

Q. You gave him your name?

A. I gave him my name.

Q. And he knew what you came for?

A. Yes, sir, I handed him my receipt and he gave me the money.

Q. How much money did he give you?

A. I think it was \$400, as near as I recollect.

Q. Did you sign a deed the day you got your money?

A. Yes, sir.

Q. Do you remember whether the deed you signed was a deed in blank or was the deed all filled out?

A. If I remember right, it was filled all but the date.

Q. And you swore to it that day?

A. Yes, sir.

Q. And is that the deed you signed? (Showing

(Testimony of Clifton C. Blevin.)

witness paper.)

A. Yes, sir.

Q. Do you know how they got your wife's signature to it; was she there or did they take it to her?

A. She was there with me; also Rice.

Q. Had you ever known Mr. Wells before this transaction?

A. No, sir, I never met him until the first time Rice took me up there to his office.

Q. How many times did you see him with reference to this whole transaction? Just the once?

A. To the best of my recollection it was just the once. I have been in his office since lots of times, but don't think he had ever talked before that.

Q. Had you ever known Mr. Pritchard before that?

A. I had not.

Q. Or Mr. Downs?

A. No, sir.

Q. (Continued by Mr. KEIGWIN.) Did you know these gentlemen you named as final proof witnesses?

A. I think Thompson was one.

Q. Did you know them?

A. Yes, sir.

Q. Did you know all of them? Andrew Hanson, John McDonald and Patrick Downs, and John W. Rose?

A. Yes, that is right.

Q. You knew them all except Downs?

A. When I went up there to file on the claim was the first I met Downs.

Q. How long had you known John W. Rose?

A. I just met him as I went up.

Q. These were the people that went up with you, Andrew Hanson, Frank McDonald and Rose?

A. McDonald was the fellow that worked at the

(Testimony of Clifton C. Blevin.)

vitrified brick plant.

Q. Do you know whether they made entries at the same time or not? A. They did.

Mr. GORDON.—We offer in evidence the sworn statement of Clifton C. Bliven, dated September 16, 1902; his testimony before the land office, dated April 17, 1903; and the cross-examination of claimant attached; the certificates of the register and receiver of the land office, dated April 29, 1903; and the deed running to Horace S. Rand, signed by Clifton C. Bliven and Lottie M. his wife, dated April 13, 1903; all to the east half of the northeast quarter and the north half of the southeast quarter of section twenty-four, township seven north of range seven east, Boise Meridian, and the final proof papers. The patent is offered also. (Clifton C. Bliven papers marked 21A to 21T, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Was Henry Rice a friend or acquaintance of yours? A. Yes, sir.

Q. An intimate friend or relative, or anything of that kind?

A. No, just an acquaintance or friend, I had known ever since I came to Idaho.

Q. And a neighbor of yours?

A. No, not particularly a neighbor. I had been with him out prospecting once or twice.

Q. Your business at that time, I think you said, was carpentering?

A. At that time, yes, sir.

No. 1883

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TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

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VOLUME II.

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(Testimony of Clifton C. Blevin.)

Q. And what was Mr. Rice's business?

A. Prospector and miner.

Q. Was this talk you had with Mr. Rice when he first suggested this matter to you a casual conversation between friends, or did you understand he was negotiating with you?

A. The way it turned out he was negotiating in a way.

Q. He was simply asking you if you wanted to go?

A. Yes, he asked me if I wanted to go.

Q. You didn't understand he was employing you to go? A. No, sir.

Q. You weren't working for wages when you went up there? A. No, sir, I was not.

Q. I understand Mr. Rice told you that if you wanted to go up and exercise your right to enter a timber and stone claim that they were being bought and you could dispose of it? A. Yes, sir.

Q. That is, after you had your final receipt?

A. Yes, sir.

Q. He didn't say you could dispose of it before you had your final receipt, did he?

A. No, sir.

Q. And it was understood at that time that under the law you couldn't dispose of it until your final receipt was issued?

A. That was my understanding.

Q. And you did nothing, and intended to do nothing, that would violate the law? A. No, sir.

Q. And you didn't intend, or didn't dispose of it,

(Testimony of Clifton C. Blevin.)

until after you got your final receipt, did you?

A. I did not.

Q. In your original application to enter this land you testified, under oath, among other things as follows: "That I do not apply to purchase the land above described, on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure or in whole or in part to the benefit of any person except myself." That statement, as made by you, was absolutely and unconditionally true, was it not?

A. Yes, sir.

Q. At the time you made this original application to purchase, you hadn't made any arrangements, as I understand it, for the money to prove up with?

A. No, sir, I had not.

Q. With anybody?

A. No, sir.

Q. Now, after you had signified your desire to enter a timber and stone claim, you were taken, I believe, by Mr. Rice and introduced to Mr. Wells?

A. Yes, sir.

Q. But the only conversation you had with Mr. Wells was as stated. He asked you if you wanted to go up and enter a claim and you stated that you did?

A. Yes, sir.

Q. There was no talk with Mr. Wells at that time about buying or selling?

A. No, sir, I don't remember that there was.

(Testimony of Clifton C. Blevin.)

Q. You went up with a team and met Pat Downs there?

A. Yes, sir, he was there on the claim.

Q. Do you remember that when you first went to Mr. Wells this time that he said to you that you had better get up a crowd of five or six and get your own team and it would cost you less?

A. I don't remember him saying that, but these others had got together and he said there was so many going up and I could go with them, and the expenses would be less the more they had, less expense for the team.

Q. I gather from that, Mr. Bliven, that you were expecting to, and did in fact, pay your own expenses up there, livery team and hotel bill?

A. Yes, sir, I did.

Q. You paid a locating fee to Pat Downs?

A. I did.

Q. When did you pay that?

A. I paid that to Pat Downs at the ranch we stopped at before we went out to the claim.

Q. During your trip to view the land?

A. Yes, sir.

Q. After you had come back and filed your original papers, as you have testified, how long was it before you began to make any inquiry with reference to money?

A. I didn't make any inquiry until just a short time before it came time for me to prove up.

Q. Then you took it up with this friend you told us about, that invested his money in lots and couldn't

(Testimony of Clifton C. Blevin.)

accommodate you? A. Yes, sir.

Q. Did you make any other efforts to get the money? A. Only through Henry Rice.

Q. Then, you went to your friend, Henry Rice?

A. Yes, sir.

Q. Henry got the money for you?

A. Not at that time, no.

Q. You failed in fact to get the money within the sixty days? A. Yes, sir.

Q. Then you went back and reviewed the property and re-advertised it and, at the end of sixty days, Mr. Rice got the money for you?

A. Yes, sir.

Q. At the time Mr. Rice first furnished you this money did you enter into any agreement, directly or indirectly, whereby they acquired a right to that property? A. No, sir, I did not.

Q. As a matter of fact, did you ever enter into an agreement which obligated you to sell this timber or any of it prior to the receipt of your final receipt?

A. No, any more than he was to take me to the buyer. I left it to him to take me to the buyer when I got my receipt. I was to go with him and get the money for the claim.

Q. You understood, did you, at that time that this Mr. Pritchard was buying timber in this vicinity? A. Yes, Henry told me he was.

Q. And that was generally known on the street, was it, that he was in the business of buying these timber claims?

A. No, I couldn't say I knew it, because if I had

(Testimony of Clifton C. Blevin.)

I might have went up there to get the money to prove up with.

Q. Mr. Rice finally told you that Mr. Pritchard was buying timber claims? A. Yes, sir.

Q. And he told you the price they were paying, \$800? A. Yes, sir.

Q. And you understood that the price was uniform?

A. No, it wasn't uniform, because some of them was only getting \$600 and some getting \$800. I got \$800.

Q. At the time you got in in September, 1902, I think the uniform price was \$800?

A. Yes, sir, I believe it was.

Q. So that there was no occasion for negotiating when you got to Mr. Pritchard's? A. No, sir.

Q. That accounts for your failure to haggle about the price. You knew and he knew what the price of the claim was and how much had been advanced upon it, and the balance belonged to you?

A. Yes, sir.

Q. And that is the reason there wasn't any negotiating?

A. I don't think it would have done any good to negotiate.

Q. But that is the reason, isn't it?

A. Yes, sir.

Q. Your understanding, and the understanding here generally, was that there was a fixed price, and if you went up to Pritchard he would pay you that fixed price, the difference between that fixed price

(Testimony of Clifton C. Blevin.)

and what had been advanced to you?

A. Yes, sir.

(Witness excused.)

Mr. FRASER.—I suppose it may be understood also that the motion to strike in all these cases may be considered as made, on the same grounds as heretofore made, on the grounds as already specified.

Mr. KEIGWIN.—We make the same statement.

[Testimony of Mack Gillum, on Behalf of the Complainant.]

MACK GILLUM, being first duly called and sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mack Gillum? A. Yes.

Q. What is your business, Mr. Gillum?

A. I was a painter at that time.

Q. That was in 1901? A. Yes, sir.

Q. Where do you reside?

A. My family is in Portland now. I have my home here on Franklin street, 1702.

Q. Mr. Gillum, who was the first person that spoke with you about taking up a timber and stone claim? A. Bill Pearson.

Q. That is William Pearson?

A. Yes, William Pearson. Excuse my grammar.

Q. What did Mr. Pearson say to you about taking up a claim?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial and calling for hearsay evidence.

(Testimony of Mack Gillum.)

A. He told me I could take up one and that I could sell it.

Q. What else? A. For \$250 profit.

Q. What did he tell you you would have to do to make this \$250?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial and calling for hearsay evidence.

A. I don't know as he told me but I knew what I would have to do.

Q. What did you know you would have to do?

A. File on the land.

Q. What else? A. Prove up on it.

Q. And what else? A. Sell it.

Q. To whom?

A. I didn't know who I would sell it to. I knew there was buyers. At least that was the talk that there was buyers at that time.

Q. Did he tell you to go and see anyone?

A. Yes.

Q. Who did he tell you to go and see?

A. John Wells.

Q. John I. Wells? A. Yes, sir.

Q. Did you go to see Mr. Wells?

A. Yes, sir.

Q. Have a talk about taking up one of these claims?

A. Yes, sir, I talked to Mr. Wells about it.

Q. What did Mr. Wells say?

A. Well, he said about the same as everybody else said, that there would be buyers for the land if I

(Testimony of Mack Gillum.)

wanted to sell.

Q. Was anything said at that time about furnishing money to prove up?

A. I don't think there was at that individual time.

Q. Was anything said between you and Mr. Wells about money to prove up with?

A. Yes, he said I could get money to prove up with but I told him I didn't want it.

Q. Well, did he make up a party for you to go up with?

A. Somebody made one up, I don't know who it was.

Q. Who told you the party had been made up and directed you to join the party?

A. I think he told me.

Q. How long was that after you saw him?

A. Two or three days or a week.

A. He told you a certain day a party was going and said that you could go along with them?

A. Yes, sir.

Q. Did he tell you who you were to see when you got to where this land was?

A. Yes.

Q. Who?

A. Pat Downs.

Q. Where did you go to see this land?

A. Went up above Pioneerville, Centerville, or whatever you call it.

Q. And did your wife go along?

A. Yes, sir.

Q. And your wife's name is Altha Gillum?

A. Yes, sir.

(Testimony of Mack Gillum.)

Q. Did Pat Downs meet you?

A. Yes, or we met him, I don't know which. We come together I know.

Q. Did he take you out to show you the land?

A. He did.

Q. Did he show you one piece of land and say that was to be yours?

A. He showed me the piece I was to take, yes.

Q. Did he do the same as to your wife?

A. I couldn't say. She went in another wagon. We all went together but she went in another wagon, and her claim was located in a different section, as I understand.

Q. Where did you get your description for this property? A. Got it up there.

Q. Who gave it to you? A. Mr. Downs.

Q. Did you get it up there, or did you get it here after you returned?

A. I think he sent it down with me.

Q. Where did he tell you to take it?

A. He told me to take it up to John's.

Q. You mean John Wells? A. Yes.

Q. I show you timber and stone sworn statement. Is that your signature?

A. Yes, that is mine.

Q. I show you testimony taken before the land office. Is that your signature?

A. Yes, that is it.

Q. Do you know who prepared this paper for you?

A. I am not certain but I think I got it at Mr. Wells' office.

(Testimony of Mack Gillum.)

Q. Now, on one of these occasions that you were at Wells' office before you went up to view this land, was anything said between you and Mr. Wells about signing an agreement?

A. It seems to me like there was but I don't remember.

Q. Didn't he ask you to sign an agreement to the effect that when you acquired title to this land you would convey it to some one that he directed you to?

A. Providing I took this money to prove up on.

Q. That is what he wanted you to sign, that provided you took this money that you would convey this property to whoever he told you. State what he wanted you to do.

A. I didn't sign anything.

Q. What did he want you to do, Mr. Gillum?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial.

A. I suppose if I took this money they wanted some protection that I would pay it back, or something.

Q. I am asking whether he didn't ask you to sign an agreement there?

A. Well, there was some kind of a statement talked about, yes.

Q. Will you state again what you said you were expected to do if you accepted that money?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial; asking the witness what he expected to do if he accepted money when he has testified he didn't accept any money and had nothing

(Testimony of Mack Gillum.)

to do with it.

Q. From Wells?

A. I was expected to make the money good in some way, I suppose, or else turn the land over, or something of that kind.

Q. Was it your understanding that if you accepted that money when you got the title to the land you were to convey it to Wells or somebody he told you to?

A. It would have been, I suppose, if I had got the money from him, I would have been under some obligation to pay the money.

Q. I will ask you if you didn't have a definite agreement with Mr. Wells before you went to view this land, before you located, that you were to turn the property over to him or some one he named and get \$250 above all that it cost you?

A. That is the way that I understand it, yes, the substance of that.

Q. Now, Mr. Gillum, will you explain about your proving up on this land? About the money that you had to prove up with and the money that was given you to prove up?

A. There wasn't any money given to me when I proved up.

Q. Wasn't \$800 given to your wife, \$400 for her to prove up with and \$400 for you?

A. There was \$800 given to her, yes.

Q. By Wells?

A. I didn't see him give it to her, but she said he did.

(Testimony of Mack Gillum.)

Q. And you had that \$400 with you when you proved up? A. No, sir.

Q. How long after you proved up was that \$400 left with your wife?

A. I couldn't say because I went to Thunder Mountain after I proved up and it was some time after I left. I don't know.

Q. Up to the time you proved up, had you ever met Mr. L. M. Pritchard?

A. I don't think so. If I did I don't remember it.

Q. Do you remember the register and receiver of the land office giving you a receipt for the money you paid into the land office?

A. Yes, sir, I do.

Q. What did you do with that receipt?

A. I think I took it home, if I remember right.

Q. I notice that there is a receipt of the register of the land office dated July 29, 1902, for \$400. Was that the day you gave him the \$400?

A. I left you the receipt. Where is those receipts that I turned over to the other fellow that was here in the land office—on the 19th day of December, 1901?

Q. Well, did you receive this in the land office?

A. I couldn't say whether I did or not.

Q. They gave you that when they accepted your proof then, did they?

A. I suppose that is when I got it, yes.

Q. How long after you received that did you meet Mr. Pritchard?

(Testimony of Mack Gillum.)

A. I think it was either the same day or the next day, I don't remember which.

Q. Who introduced you to Mr. Pritchard?

A. Mr. Wells.

Q. And you went to see Mr. Pritchard that day?

A. Yes, sir.

Q. And signed a deed? A. I did.

Q. You and your wife together?

A. Yes, sir, I think so.

Q. Is that your signature to the deed and is that the signature of your wife?

A. I think it is.

Q. Was that deed made out when you went there?

A. I think it called for \$2,000.

Q. Did you receive \$2,000? A. No.

Q. Was this deed made out when you arrived at Mr. Pritchard's office?

A. I think it was. I think I picked it up and read it, if I remember right.

Q. How much money was given to you that day?

A. \$475.

Q. Was that for your wife's claim and your claim? A. Yes, sir.

Q. Was anything said why they didn't give you \$500?

A. Yes, we had a little talk over the other \$25.00.

Q. Was that the only money that you talked of there, the difference of \$25.00?

A. That was all I had any interest in, that \$25.00.

Q. All you expected to get was \$250 apiece, was it?

(Testimony of Mack Gillum.)

A. That was all I expected to get, yes, sir.

Q. Now, did you return to Mr. Wells his \$400, or was that taken out? A. Taken out, all of it.

Q. In other words, was that all the money that was given you at that time?

A. That was what I said, wasn't it, \$475?

Q. Then the \$400 that was left with your wife you kept for the money you paid in the land office for your claim? A. I did.

Q. And the part that was left for your wife they retained at Pritchard's office?

A. I suppose so, I didn't see it.

Q. There wasn't anything said about it on that occasion, was there?

A. I don't remember about that, I couldn't say.

Q. Is this the only deed that you were required to make, or were you asked to make one after that or before?

A. I received a letter once, wanting me to come up and make a new deed.

Q. Did you go? A. No, sir.

Q. Why not?

A. I had no land to deed away.

Q. (By Mr. KEIGWIN, Continuing.) How long was that after this?

A. I couldn't say; five or six months, probably, I don't remember.

Q. Have you that letter, Mr. Gillum?

A. I couldn't say unless I rummage my papers and see. I don't know.

Q. Do you know who wrote that letter?

(Testimony of Mack Gillum.)

A. I don't remember who did write the letter.

Q. Do you know who it was from?

A. Well, I couldn't say whether it was from Pritchard or not. I wouldn't be certain.

Q. Was it from Pritchard or Wells?

A. I couldn't say.

Q. It was one or the other, you think?

A. It might be, I couldn't say which it was. I remember the letter and I talked to my wife about it.

Q. Did it state any reason for wishing you to make another deed?

A. I don't think so. It was very brief.

Q. Now, Mr. Gillum, do you think that you could find that letter? A. I can't tell. I can look.

Q. Will you do that for us?

A. Yes, I'll look and see.

Q. Are you going back to Portland to-night?

A. No, sir.

Q. In a day or two? A. Probably.

Q. And you have the letter up there, if you have it at all?

A. If I have it at all I have it there.

Mr. KEIGWIN.—We will ask you to do that.

Mr. GORDON.—We offer in evidence the sworn statement of Mack Gillum, dated December 26, 1901; his testimony before the land office, dated March 18, 1902; the cross-examination attached thereto—

The WITNESS. (Interrupting.) Will you allow me to look over those papers, Mr. Gordon?

Mr. GORDON.—Certainly. (Witness examines papers.)

(Testimony of Mack Gillum.)

Mr. GORDON. (Continuing.) The final proof of Mack Gillum and the proof of advertisement.

Mr. BUNDY.—Give us the date of the final proof.

Mr. GORDON.—March 18, 1902.

Mr. BUNDY.—The certificate, final receipt.

Mr. GORDON.—The witness has it; I will give it to you.

Mr. BUNDY.—What is the date of the final receipt, Mr. Gillum?

Mr. GORDON.—July 29, 1902. The certificates of the register and receiver of the land office; the deed by Mack and Altha Gillum to A. E. Palmer, dated July 31, 1902; the patent, dated February 1, 1904, involving the northeast quarter of section twenty-six, township eight north of range five east, Boise Meridian. (The Mack Gillum papers marked 22A to 22Q.)

Cross-examination.

(By Mr. FRASER.)

Q. Who was the party that you say spoke to you about locating a timber claim, Mr. Gillum?

A. William Pearson.

Q. Had you heard from other parties the fact that timber claims were being located about that time up in the basin?

A. It was very common talk, yes.

Q. It was very common talk that people were locating timber claims up in the basin?

A. Yes, sir.

Q. So that it wasn't any news to you when Mr. Pearson told you there were timber claims up there

(Testimony of Mack Gillum.)

to be located? A. No, I knew that before.

Q. How long after you talked to Mr. Pearson before you went up to make a location on this land?

A. I couldn't say, Mr. Fraser, I don't remember. We talked about it numerous times. I couldn't say as to that.

Q. You don't know it was some time after that?

A. I couldn't say what time it was.

Q. Had you talked to Wells before you went up to make the location?

A. Yes, I talked to Wells before, I think. I was acquainted with him before that.

Q. How long had you been acquainted with Mr. Wells?

A. I couldn't say. We had some other business outside of that.

Q. What was your object in talking to Mr. Wells? Did you understand that he was familiar with that country up there? Or engaged in the business of locating?

A. What I talked to him first about was because Pearson told me to go and see Wells.

Q. What purpose did he say for?

A. He said "Go and see John Wells" and I went and talked to him.

Q. What did you go to see Wells for?

A. I wanted to see if there was a chance to make any money.

Q. Did you think Wells could inform you of that matter? A. I didn't know.

Q. Why should you go to him to find out that if

(Testimony of Mack Gillum.)

you didn't know? A. I went there to see.

Q. To see if he could advise you in the matter, was that it? A. Yes, sir.

Q. Did you ask Wells if he thought you could sell this claim after you got it? A. I did.

Q. Did he tell you he thought you could?

A. Yes, sir.

Q. And you finally concluded that you would take up a claim? A. Yes, sir.

Q. And you went up and Mr. Downs I believe took you over the ground? A. Yes, sir.

Q. You were acquainted with that ground before, weren't you? A. Yes, sir.

Q. You had been over it before Mr. Downs showed it to you?

A. Yes, sir, pretty familiar with it. I had herded sheep all over it.

Q. After you looked at the ground you came back to Boise, didn't you? A. Yes, sir.

Q. How long were you here in Boise before you made your filing after you came back from the Basin?

A. I don't remember. It wasn't very long though.

Q. Just a day or so?

A. Something like that.

Q. Who went with you to the land office, if you recollect?

A. There were several there. There was two loads of us at the time I went.

Q. Who went with you?

(Testimony of Mack Gillum.)

A. They were all there at that time, or most of them. I don't remember just who.

Q. Waiting to file their applications?

A. Yes, sir.

Q. Now, at the time you went to the land office and filed your first application to purchase after you returned—I will ask you if that is your signature to the papers? A. It looks very much like it.

Q. You believe it is? A. Yes, sir.

Q. It was sworn to before Edward Garrett?

A. Yes, sir.

Q. So you think that is your signature?

A. I don't think there is any question about it.

Q. This question was asked you at the time you made your application. This is Question No. 13, "Have you sold or transferred your claim to this land"? Calling your attention to Exhibit 22A, this was the paper which you filed in the land office and the question you answered at that time, was it not?

A. Yes, sir.

Q. In this paper your application to purchase, we find the following: "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Was that true at the time you made your first application in

(Testimony of Mack Gillum.)

the land office?

A. I wouldn't have taken the land if it hadn't been for my own benefit.

Q. Then at the time you filed this sworn statement this statement was true?

A. It was absolutely.

Q. At the time you filed this first application you hadn't made any agreement by which the benefit should go to any person except yourself?

A. I expected it to benefit me.

Q. This statement was true at the time you made it?

A. It certainly was.

Q. It is true so far as that is concerned?

A. I sold it.

Q. You took the land for the purpose of selling it and making what you could out of it?

A. Yes, sir.

Q. You testified at the trial of Senator Borah?

A. Yes, sir.

Q. I will ask you if at that time you were asked these questions, and if your answers were as I read them: "Q. Now at that time did Wells talk to you about this claim that you were going to enter?

A. Yes, sir. Q. Did he speak to you about the agreement? A. He said there would be buyers for the land if I wanted to sell it." Was that your answer at that time? A. I think it was.

Q. Was your memory as good at the time you testified at the Borah trial as to the facts in this matter as it is at the present time?

A. I think it would be, yes, sir.

(Testimony of Mack Gillum.)

Q. Do you think it would be? A. Yes, sir.

Q. I will ask you this question that was asked you at that trial and ask you if you testified as follows:

“Q. After you signed the deed did he just hand you this money? A. Well, sir, it was on the table and I counted it.

Q. You had no talk with him about the amount, did you? A. Never talked to Mr.

Pritchard before. Q. Had you talked with Wells about it? A. Not any more than the understand-

ing was we were to get \$250 for the claim over and above expenses. Q. When did you have that under-

standing? A. That was the common understand-
ing all the time on the street and everywhere.”

A. That is what I say now.

Q. That is what you said at that time. When did Wells give you this \$400 that you testified regarding?

A. I didn't testify that Wells gave me any \$400.

Q. You say he left \$400 somewhere that you got?

A. I said that Wells never gave me no money.

Q. Did he give it to your wife?

A. She said he did.

Q. The only knowledge you have of that is from hearsay, isn't it? What other knowledge have you got except that?

A. I knew it was in the bank.

Q. Who put it in the bank?

A. She did I suppose.

Q. Your wife?

A. Yes.

Q. Did you know it was Wells' money from any

(Testimony of Mack Gillum.)

other source except what your wife told you?

A. That's right.

Q. When did you prove up on this land?

A. You have the date there.

Q. Was this money given to your wife before you made your final proof? When you made your final proof you left here?

A. I left for Thunder Mountain some time the latter part of December.

Q. When you came back your wife told you this money had been left there?

A. I heard of it in a letter from my wife.

Q. But this was after you made your final proof, wasn't it, that this money was given to your wife?

A. Yes.

Q. Did he leave any for her claim, do you know?

A. I wasn't here; I couldn't tell you. It is all hearsay from me, that part of it.

Q. After you got your final receipt you considered the land yours, didn't you, Mr. Gillum?

A. It was mine.

Q. You could have done what you pleased with it, couldn't you? A. Yes.

Q. What I mean is, you could have sold it to me, if I had offered you enough for it, couldn't you?

A. Yes, if you had come through with the money.

Q. You probably would have sold it to anybody that would have paid you more for it, wouldn't you, Mr. Gillum?

A. I don't know whether I would or not.

Q. You don't know of any reason why you

(Testimony of Mack Gillum.)

couldn't, do you? A. I could have, yes.

Q. You hadn't promised that anybody should, any particular man should have this land, had you?

A. No.

Q. And so far as you know you were free to sell it to anybody you pleased?

A. I could have sold it, yes.

Q. After you got the title? A. Yes.

Q. And you don't know of any reason why you couldn't?

A. I could have sold it if I had wanted to.

Q. And you testify now, as you did at the Borah trial, that it was the rumors on the street that you were to get \$250 for these claims over and above expenses? A. That was common talk.

Q. You expected to get that, did you?

A. Yes, sir.

Q. You would have been satisfied if you had gotten it? A. Yes, but I didn't get it.

Q. You would have been satisfied if you had gotten it? A. Yes.

Q. You didn't agree to work for wages, did you, in the location of this land, or anything of that kind?

A. No; I paid the other fellow for that.

Q. You didn't consider yourself hired, did you, to earn this \$250? A. No, I wasn't hired.

Q. You considered, Mr. Gillum, that you were making this \$250 by exercising your right as an American citizen and disposing of it at a profit, didn't you?

A. Certainly, or I wouldn't have took it.

(Testimony of Mack Gillum.)

Q. That is the reason you went into it, like anyone else?

A. It must have been, or I wouldn't have went into it.

Q. That was the idea you had when you first went into it, that you would take the land up and sell it and make \$250?

A. I wouldn't have give it to nobody else.

Q. And as you stated here at the time you entered that land you hadn't made any agreement by which the title was to inure to anybody else at all?

A. Hadn't made any in writing.

Q. This statement you made here?

A. I wasn't under any obligations to anybody, no.

Q. You used your own money to prove up with?

A. I did.

Q. And you used your own money to pay your expenses and at the land office? And you used your own money to go up to Placerville to go up to look at the land and home again?

A. Yes, it cost me \$22.80.

Q. Prior to the time you entered this land in the land office, before you filed your first papers at all had you at that time any agreement with anybody in regard to selling or disposing of this land to them, or by which they were to have any interest at all in it?

A. No, I never had no agreement with anybody, but I understood that I could make that much out of it.

Q. Wells told you that there would be buyers for

(Testimony of Mack Gillum.)

the land if you wanted to sell it? A. Yes, sir.

Q. You believed that to be a fact?

A. I wouldn't have taken it if I hadn't.

Q. That is the reason you took it?

A. That is all the reason I took it. I couldn't do anything with it up there unless I could dispose of it.

Q. You hadn't any other agreement with Wells except this conversation you testified to, did you?

A. No, sir.

Q. And that is what you mean in your testimony, that there was no agreement at all at the time you went up there and filed on this land except that you were to take it up and sell it and make \$250 on it, if you could, and the statement that Wells had made that there would be buyers for it if you wanted to sell?

A. I have told you that a dozen times.

Q. You hadn't any agreement?

A. I told you there was none, talk that we could get that.

Q. And that you could get it by selling the land?

A. They didn't say to sell the land.

Q. And you didn't try to sell this land before you got your final receipt? A. I wasn't here.

Q. Did you leave immediately after filing your first papers in the land office, between the time you made your first entry, before you made your final proof you hadn't tried to sell it, had you?

A. I hadn't any to sell; I don't know how a man can sell it unless he has some to sell.

(Testimony of Mack Gillum.)

Q. Nobody had wanted to buy it before you got title to it?

A. No, I don't know of anybody that wanted it.

Q. You have spoken somewhat of Wells wanting you to sign some kind of an obligation. Was that at the time he was going to furnish you the money to prove up?

A. That was when I talked about getting the money to prove up.

Q. Before you filed the first papers or after?

A. Yes, before I filed.

Q. And was it in the nature of security for the money he was giving you, Mr. Gillum?

A. I suppose it would have been.

Q. As security for the \$400 they had given you to make formal proof?

A. I supposed he wanted to be secured for it, yes.

Q. And you didn't enter into any such agreement, did you? A. No, sir.

Q. You didn't get the money from him to make final proof?

A. No, not from him I didn't get mine.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Gillum, do you remember how you paid for this land, whether it was in cash or by check?

A. I think I paid the money.

Q. You drew it from the bank? A. No, sir.

Q. Where did you get the money?

A. Got it up here in the courthouse.

Q. Money that was due you?

(Testimony of Mack Gillum.)

A. A mortgage that I held that was paid to me there, and if I remember right I kept it on my person until I paid for the land.

Q. The cash you paid for the land?

A. I think so.

Recross-examination.

(By Mr. BUNDY.)

Q. I don't know but that I am repeating the same thing, but excuse me. There has been a good deal said about Wells' statement to you that if you would go up and file on that timber claim you could make \$250, and you say it was common talk up and down the street that there was that amount of money to be made. Was that understanding based on the fact that there were buyers here buying timber claims and paying \$250 more than it would cost to get them?

A. It was my understanding that there would be buyers.

Q. And that the price would be \$250 in excess of what it would cost to get them from the Government?

A. That was my understanding.

Q. The thing I am trying to discover is whether or not you went and made that entry as an employee or a hired man, or whether you went to make \$250 profit? A. I was working for myself then.

Q. What you made was to be made by way of profit and not wages?

A. Nobody hired me. I had to pay the other fellow, I am sorry to say.

At this time court adjourned until Saturday morning, February 6th, 1909, at ten o'clock.

(Testimony of Harry S. Worthman.)

Court met Saturday morning, February 6, 1909, at 10 A. M., the Examiner and counsel for the respective parties being present.

[Testimony of Harry S. Worthman, on Behalf of the Complainant.]

HARRY S. WORTHMAN, being first duly called and sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You may state your full name.

A. Harry S. Worthman.

Q. What is your occupation or profession?

A. I am an attorney at law by profession; my present occupation is that of rancher.

Q. What were you employed at in 1902?

A. I was engaged in the practice of law.

Q. I will ask you whether you made an entry under the Timber and Stone Act of land in the Boise Basin?

A. I did.

Q. Did you ever make but the one entry?

A. That is all, one entry.

Q. I will ask you if that is the entry you made (showing witness paper)? Is that your sworn statement?

A. Yes, sir.

Q. I will ask you if that is your testimony, your signature to the testimony taken before the land office?

A. Yes, sir.

Q. Mr. Worthman, who was the first one that spoke with you about taking up a claim under the Timber and Stone Act?

(Testimony of Harry S. Worthman.)

A. No one spoke to me. I think it came about by my speaking to a gentleman by the name of Joe Lippincott about it.

Q. What was your conversation with Mr. Lippincott?

Mr. BUNDY.—That is objected to as incompetent, irrelevant, and immaterial and calling for hearsay evidence.

A. I said to Mr. Lippincott, "I see quite a number of your people up in the Basin are taking up timber claims," and I wanted to know if there were any left up there, and where I could find out as to who the cruiser was, etc.

Q. Did he direct you to see someone?

A. He told me I should see John Kinkaid.

Q. Did you go to see John Kinkaid?

A. I didn't go to see him, but I met him the next two or three days on the street, and asked him about a claim and said I desired to take up a claim, and a friend of mine also desired to do so, and he said he would see the cruiser and see if there was any left up there, and in a few days he told me there were three claims left up there, that they weren't very good, but if we wanted them we could go up and look at them.

Q. Who was this friend you spoke with reference to?

A. W. S. Walker.

Q. Do you know where Mr. Walker is now?

A. His home is here in Boise, but I understand how he is in New York City, or east somewhere, temporarily.

Q. Who was the other friend you had in mind?

(Testimony of Harry S. Worthman.)

A. He is the only one, just the one.

Q. Had you known Mr. Kinkaid, before this?

A. Yes, sir.

Q. Did he subsequently see the cruiser and have another conversation with you?

A. At the time he told me there were three claims left up there I told him I guessed we would go up and look at them; that we might as well use our right now as any other time, and he said that a man by the name of Pat Downs was the cruiser, and that he would bring him over in a day or two and introduce him to me and we could make arrangements to go up there, which we did.

Q. How long after he introduced you to Pat Downs did you go?

A. Two days, after, I believe.

Q. Did Mr. Downs go with you?

A. Yes, sir.

Q. Who else was among the party?

A. Myself, Mr. Downs and Mr. Walker.

Q. Where did you go, what place, town?

A. Went to Idaho City.

Q. How far was the claim that you were shown from Idaho City?

A. Three or four miles.

Q. You went out there and he showed you one piece, or a number of pieces you could select from?

A. He showed us three pieces. He said they were the only three pieces left in that tract of land and we looked the entire three pieces over, and selected what we considered the best two pieces.

Q. Did he tell you how much timber was on each

(Testimony of Harry S. Worthman.)

quarter section, approximately?

A. I believe so, yes, sir.

Q. Do you remember how much he told you?

A. No, I don't think I can remember just how much he did tell me, anyway I thought it was not quite as much as I would like to have at the time; still it was all right.

Q. What did he charge you for locating you?

A. Either forty or fifty dollars apiece.

Q. Did you pay it then?

A. I paid it the next two or three days.

Q. Did he give you a description of this property? A. Yes, sir.

Q. And did you draw this paper yourself (showing witness paper)? A. Yes, sir.

Q. And filed it at the land office?

A. Yes, sir.

Q. Did you use your own money with which to prove up? A. I did.

Q. And after you proved up, did you sell it?

A. I did.

Q. How long afterwards?

A. I think in the fall of the same year I proved up.

Q. To whom did you sell it?

A. I think the grantee in the deed was Horace S. Rand.

Q. Now, before you sold it, did you have an agreement to sell it with anybody, or at the time you sold it?

A. I didn't have any agreement beforehand.

(Testimony of Harry S. Worthman.)

Just about the time there was quite a forest fire right there in the neighborhood, within five or six miles of there and Mr. Walker and I officed in the same building, we were often in each other's offices. We were talking about the fire and made up our minds that we had better sell the claims, if we could, and I went after Mr. Kinkaid and asked him if he would buy them. It had been rumored that he was buying them, and he said at that time he wasn't just then buying, but he might probably in a month from that time, and about two weeks after that, he came around and we made an agreement, and he purchased the claims.

Q. Did you go to see him about it, or did he approach you? A. I approached him.

Q. Did anyone tell you that Mr. Kinkaid was buying timber claims? A. Not that I know of.

Q. How much did you sell this to him for?

A. Either \$750 or \$800.

Q. Did you know Mr. Horace S. Rand?

A. I did not.

Q. And so all the negotiations you had with reference to selling this land were with Mr. Kinkaid?

A. With Mr. Kinkaid.

Q. And you gave him a deed? A. I did.

Q. Do you remember what the consideration in the deed was?

A. Eight or nine hundred dollars, something like that.

Q. Now, how many deeds did you give or make to Mr. Kinkaid? A. Two.

(Testimony of Harry S. Worthman.)

Q. Now, the first one that was made, do you remember when that was made? I haven't it, so I have to trust to your best recollection.

A. It was made sometime during the late summer, either August or September, of 1902; the date I can't tell you exactly.

Q. That was just shortly after you made your final proof?

A. The reason we haven't the first deed was because when we made the second deed he handed me back the first deed, and I tore it up.

Q. I show you a deed here signed by you, and ask you if that is a deed that you signed?

A. Yes, sir.

Q. And acknowledged? A. Yes, sir.

Q. Who prepared that deed?

A. It is in the handwriting of John Kinkaid.

Q. Why did you make a second deed, Mr. Worthman?

A. So as to increase the consideration.

Q. Did you get any more money when you increased the consideration? A. No, sir.

Q. In the first deed, did they put in the actual consideration?

A. The actual consideration, as I remember, was in the first deed.

Q. And the second deed?

A. It was explained that Mr. Kinkaid wasn't able, or some way, by reason—I understood he was purchasing the property for somebody else, or either for himself, and then re-selling it, and that who-

(Testimony of Harry S. Worthman.)

ever it was the party wouldn't pay him any more than the amount in the consideration; then, so as he could get something out of it, the consideration was changed for that reason.

Q. And they changed the name to A. E. Palmer in the second deed, is that correct?

A. That is correct.

Mr. GORDON.—We offer in evidence the sworn statement of Harry S. Worthman, dated April 5th, 1902, the testimony of Mr. Worthman before the land office, and his final proof, cross-examination to the testimony in the land office, and the deed of Harry S. Worthman, executed March 16th, 1903, running to A. E. Palmer, the certificates of the register and receiver of the land office, dated June 19th, 1902, to the west half of the southeast quarter and the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section 29, township 6 north of range 6 East, Boise Meridian. I also offer the patent.

(Papers marked 23A to 23M inclusive.)

Mr. FRASER.—We make the same objection to their admissibility as has been made to the other exhibits offered heretofore.

Mr. GORDON.—Counsel for the complainant make the same reply as heretofore made to such objections.

Q. (By Mr. GORDON.) Mr. Worthman, did you ever do any business before the land office on the suggestion of John Kinkaid?

A. Yes, sir.

Q. State what that was.

(Testimony of Harry S. Worthman.)

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, unless it is first made to appear that it relates to some of the land described in the bill in consideration.

A. It was in relation to some applications for rehearing in either four or five cases.

Q. Will you name the cases?

A. Arthur Anderson, a man by the name of Ball—

Q. (Interrupting.) Was it James T. Ball?

A. Yes, sir. Nugent.

Q. (Interrupting.) Was that Albert Nugent?

A. Yes, sir. And a man by the name of Hunter.

Q. Was that Abel E. Hunter? A. Yes, sir.

Q. Did you represent a man by the name of Harvey H. Wells at the suggestion of Mr. Kinkaid?

A. Just four of them I represented. I don't know whether I represented Harvey Wells or not. However, Harvey Wells wasn't one of the defendants in that trial.

Mr. BUNDY.—I now renew my motion to strike out the testimony of this witness with reference to this hearing in the land office on behalf of the entries made for the reason that it affirmatively appears that the lands involved, or the entrymen involved are not mentioned in the bill of complaint, and for the further reason that it does not appear from the bill of complaint in consideration that these particular entrymen, or either of them, obtained any land from the Government or conveyed any to the defendants, or either of them.

(Testimony of Harry S. Worthman.)

Q. What was said by Mr. Kinkaid to you about your representing these people at the land office?

A. The first time he spoke to me about it he said there was four or five entries held up, and they were friends of his from up in the Basin, and that he wanted me to act as their attorney and make application for rehearing, and he said he would obtain the facts for me so that I could draw up the applications for rehearing, and a few days after—I don't remember how long—he came and stated sufficient facts for me so that I drew up the rehearing applications and filed them.

Q. Did he state to you what these claims were held up for?

A. At the time they were held up they were claimed to be mineral land.

Q. Was that the only objection to them?

A. I think so at that time. The application for rehearing—I don't remember, but I think that was all that was said at that time.

Q. Well, did you say anything to him about money, about being paid a fee at that time, and if so what was it?

A. I did ask him where I was going to get my fee.

Q. What did he tell you?

A. He said that he would see that I received my fee.

Q. Did you make the application for these parties that you have named for rehearing in the land office?

A. I did.

Q. You have never met any of the persons you

(Testimony of Harry S. Worthman.)

were representing at the land office at that time?

A. No, sir.

Q. Do you remember when the hearing was set for?

A. I don't believe the hearing was had until in the neighborhood of a year after the applications for rehearing were filed.

Q. And how long before the hearing did you consult, if at all, with these men that you appeared in the land office to represent?

A. I met and consulted with them for the first time about fifteen minutes before the hearing was called.

Q. When you got into the land office in this hearing was it then learned that the only reason these lands were held up was that the land was supposed to be non-mineral?

A. You mean in the course of the rehearing?

Q. Yes.

A. In the course of the rehearing I, of course, found out that there were other reasons.

Q. What were the other reasons?

Mr. FRASER.—That is objected to as calling for secondary evidence. The record itself at the land office is the best evidence. The records of the Department are the best evidence of why they were held up.

Mr. KEIGWIN.—The complainants will undertake to produce the record and offer it in evidence.

Q. State what the other reasons were, Mr. Worthman?

A. The other ground was fraud.

(Testimony of Harry S. Worthman.)

Mr. FRASER.—We move to strike out the last answer of the witness as incompetent, irrelevant and immaterial in this proceeding. The bill of complaint shows that none of the parties mentioned ever took up any lands, or if they did so take up Government lands, they never sold it, or any of it to the defendants, or any of them; for the further reason that it is secondary evidence and the record itself is the best evidence of the reasons of the holding up of these entries; and calling for a conclusion of the witness.

Q. Was anyone associated with you in the hearing before the land office? A. Yes, sir.

Q. Who was that? A. Mr. Frank Martin.

Q. Do you remember when he was retained, and who he was retained by, and the reasons for retaining him?

A. I don't know when he was retained, but I was told on the morning of the trial.

Mr. FRASER.—We object to what you were told.

Q. Who were you told by?

A. I was told by Mr. Kinkaid.

Q. Proceed.

A. That he would assist me. I had asked for assistance, and he said he would assist me. That was the morning that the rehearing was to come up.

Q. And did he come into the case?

A. He did.

Q. That same day?

A. That same day, yes, sir.

Q. Well, did you withdraw from the case then?

(Testimony of Harry S. Worthman.)

A. No, sir, I had my reasons. A day or two prior to that, or the day before, I think in the evening, I think I had told Mr. Kinkaid, if I remember now, that I would have to have assistance, that I had important business at the Statehouse that would probably take me a week or ten days, and he would have to get somebody to assist me, and I went down there that morning until Mr. Martin could come in. His office was next door to the land office, in the Sonna Building, and about ten minutes after we got into the land office he came in, and I left and went up to the Statehouse, and during the trial of the case, after I got through with my business in the Statehouse I would come down and try to keep run of the case, but the record was so voluminous that I gave it up. While I was attorney in the case, I didn't have a chance to actively engage in the trial of the case. That was the case of Mr. Anderson. I engaged in the trial of the other three cases. It was simply a matter of stipulating that the evidence in the Anderson case should apply to the other cases.

Q. Did you during the course of that hearing learn whether or not John I. Wells was interested in these cases?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial,

A. Yes, sir, that is only through the case.

Q. Who paid you your fee in this case?

A. Mr. Kinkaid.

Q. How much did he pay you? A. \$150.

Q. Was that in cash?

(Testimony of Harry S. Worthman.)

A. \$50 cash, and the balance by note.

Q. And where did he say he was going to get the money with which to pay the note?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and asking the witness to testify to hearsay evidence.

A. From Frank Steunenberg.

Q. What was the action of the land office on those hearings?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial; the record is the best evidence of the action in the land office; this would be secondary evidence.

A. The application was denied.

Q. Did you note an appeal from that decision?

Mr. FRASER.—That is objected to for the same reason, that the records of the land office will show whether an appeal was taken and the manner in which it was taken.

A. I did not.

Q. Did you ever have anything further to do with the representing of those four persons whose names you have mentioned after that?

A. I did not.

Q. Do you know one William Sweet, mentioned in this bill of complaint? A. I do.

Q. When did you meet Mr. Sweet?

A. Some time during the year 1901, at Boise City.

Q. Was your meeting with him of a personal, social, or professional character?

A. I was introduced to him by someone—I don't

(Testimony of Harry S. Worthman.)

know who now—at the Overland Hotel. I boarded there at that time. We would meet each other frequently around the hotel and that was all.

Q. Did you have any business with him after that? A. Yes, sir.

Q. State what that was.

A. I received a letter from him from the East asking me to—

Mr. FRASER.—(Interrupting.) We object unless you introduce the letter.

Mr. GORDON.—I will introduce all the letters. I have them here.

Q. Go ahead.

Mr. FRASER.—You might identify it and ask him if that is the letter he received.

Mr. GORDON.—Q. I will show you a letter dated Crawford House, Boston, January 5, 1903, signed William Sweet, addressed to “Friend Harry”; another one dated Crawford House, Boston, February 5, 1903, to Mr. Harry Worthman, signed William Sweet; another letter dated Windsor Hotel, Philadelphia, March 5, 1903, to Harry S. Worthman, signed William Sweet; another letter dated Windsor Hotel, May 12, 1903, to Harry S. Worthman, signed William Sweet; another letter dated Windsor Hotel, Philadelphia, May 15, 1903, to Harry S. Worthman, signed William Sweet; a letter dated Windsor Hotel, Philadelphia, May 15, 1903, to “Friend Harry,” signed William Sweet; a letter dated Windsor Hotel, May 15, 1903, to Harry S. Worthman, signed William Sweet; a letter dated

(Testimony of Harry S. Worthman.)

Windsor Hotel, May 21, 1903, addressed Harry S. Worthman, signed William Sweet; another letter dated Windsor Hotel, May 21, 1903, addressed to Harry S. Worthman, Boise, Idaho, signed William Sweet; a letter dated Windsor Hotel, May 21, 1903 (I called it a letter—it is marked agreement), on Windsor Hotel paper, dated Boise, Idaho, May 21, 1903; a letter dated Windsor Hotel, June 9, 1903, addressed to Harry S. Worthman, Boise, Idaho, signed William Sweet; a letter dated Windsor Hotel, Philadelphia, June 9, 1903, addressed to "Friend Harry," signed William Sweet; a letter dated Windsor Hotel, Philadelphia, June 2, 1903, addressed to Mr. Harry S. Worthman, signed William Sweet; a letter dated Windsor Hotel, Philadelphia, June 4, 1903, addressed to Mr. Harry S. Worthman, Boise, Idaho, signed William Sweet; a letter dated Windsor Hotel, Philadelphia, June 4, 1903, addressed to Harry S. Worthman, Boise, Idaho, signed William Sweet. I will ask you, Mr. Worthman, if you know the handwriting of William Sweet?

A. Yes, sir.

Q. Are these letters, papers I have just shown you in the handwriting of William Sweet?

A. Yes, sir.

Q. Were they received by you through the mail from William Sweet? A. They were, yes, sir.

Mr. GORDON.—We offer these papers just identified by Mr. Worthman in evidence.

(Letters marked as Plaintiff's Exhibits 23A-1 to 23A-16 inclusive.)

(Testimony of Harry S. Worthman.)

Mr. BUNDY.—Counsel for the defendants object to their introduction as incompetent, irrelevant, and immaterial, not tending to establish any of the allegations of the bill as against the defendant, Barber Lumber Company.

Mr. FRASER.—Allow us to read them and make any other objection we want to.

Mr. GORDON.—You may read them and make whatever subsequent objection you wish.

Mr. GORDON.—Q. Mr. Worthman, what did this correspondence between you and Mr. Sweet relate to?

Mr. BUNDY.—We object to that. The correspondence itself is the best evidence.

A. It related to \$10,000 that Mr. Sweet wished me to get from Frank Steunenberg.

Q. Did you ever have any talk with Mr. Sweet about this? A. I never did.

Q. Did you see Mr. Steunenberg with reference to getting this \$10,000? A. I did not.

Q. Did you see anyone with reference to it?

A. I did.

Q. Who did you see? A. Mr. Borah.

Q. What Mr. Borah?

A. Mr. W. E. Borah.

Q. William E. Borah? A. Yes, sir.

Q. And was he representing Mr. Steunenberg in this matter? A. I don't know.

Q. Where did you go to see him?

A. I saw him in his office.

Q. Why?

(Testimony of Harry S. Worthman.)

A. Because it was suggested by Mr. Sweet's letters to me to see Mr. Borah, and also enclosed in the first letter to me in relation to this matter a letter to Mr. Borah in which he stated to Mr. Borah that I represented him, Mr. Sweet, and had authority to act in that matter.

Q. Will you tell the whole story without me having to ask direct questions about that transaction?

A. Well, the first letter with relation to this matter stated that Mr. Steunenberg had \$10,000 of his money, and he, Mr. Sweet, had not a scratch of a pen to show that Mr. Steunenberg had this money; that the contract in relation thereto was drawn up in Mr. Borah's office, and he desired me to see Mr. Borah and see if I couldn't obtain a copy of that contract if possible.

Q. Did you see Mr. Borah?

A. I saw Mr. Borah and he said he hadn't a copy of it, and that he would see Mr. Steunenberg and see if he could get it. The reason I didn't see Mr. Steunenberg personally was because he and I were not friendly at that time.

Q. What was this contract in relation to, this \$10,000?

A. So I understood from the letters.

Q. What was the \$10,000 for, what did Mr. Steunenberg get the \$10,000 for?

Mr. BUNDY.—We have to object to that as incompetent, irrelevant and immaterial, and for the further reason that so far as it appears the witness' information is contained in the correspondence offered. If that is true, the correspondence is the

(Testimony of Harry S. Worthman.)

best evidence.

A. I tell you, Mr. Gordon, that I know exactly what it was for, but I don't know in a way of my own knowledge.

Q. Well, tell us as best you know.

A. At that time I only knew what was in that letter. Now, I know a whole lot of things.

Q. Tell all you know now about it.

MR. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and calling for information that he afterwards obtained.

A. This \$10,000 was given to Mr. Steunenberg by Judge J. H. Richards, who was at that time Mr. Sweet's attorney, and had in his possession \$10,000 of Mr. Sweet's money. The money was turned over for the purpose of buying lands. There was a contract drawn up in Mr. Richard's office, whereby this \$10,000 was put in Mr. Steunenberg's hands and at the end of the deal the profits were to be divided equally and Mr. Sweet was to have his \$10,000 released or returned to him; that was the substance of it.

Q. And was that the contract you have just referred to?

A. No, sir, the contract that I have just referred to that I was to receive a copy of, I have never seen, and never received a copy of it to my best recollection.

Q. Proceed with the other transactions that occurred after you received these letters.

A. Well, I didn't receive this copy, and over a

(Testimony of Harry S. Worthman.)

period of over four or five months Mr. Sweet kept writing to me. In the beginning I was working very carefully because I didn't understand the matter. I hadn't any idea of just what the situation was and Mr. Sweet didn't fully explain it in his letters, and I thought I had a delicate matter and I had to be easy and work easy, and so I worked slow and easy and it finally dawned on me that I had more power than I thought I had when I demanded that he pay the \$10,000 or I would know the reason why.

Q. Who was this you made this demand on?

A. Mr. Borah, and about three days after that Mr. Kinkaid came to me and said he would settle the matter up with me for Mr. Steunenberg.

Q. Kinkaid came to you?

A. Yes, sir. And he said the arrangement was that they were to be put in escrow. The interest that Mr. Sweet had in timber lands—understand he had no scratch of a pen for this—but then he had the interest—he had nothing to show that he had it, but it was to be put in escrow, put in the bank, and they were to pay him the sum of \$4,000, Frank Steunenberg was to pay Mr. Sweet the sum of \$4,000, six months I think from May 1, 1903, and also to immediately release this \$10,000 or pay it over to Mr. Sweet. You see, the \$10,000 I never could explain that, I have never been able to explain it, but it was somehow, Mr. Steunenberg had it and at the same time the Bank of Commerce had to release it.

Q. Was the money in the bank, as you understood it?

(Testimony of Harry S. Worthman.)

A. I don't know. The Bank of Commerce has never been able to explain it to me. Coffin is the cashier and you can find it out from him. I know I got the \$10,000.

Q. Did you get anything else?

A. And the \$4,000.

Q. Do you know what land this correspondence and this \$10,000 had relation to?

A. Never of my own knowledge, I do not.

Q. You were the attorney for Mr. Sweet, and either through him or someone else connected with this transaction?

A. The first contract, that I saw; the second contract, that I never saw; Mr. Sweet's letters don't say at all what the land is or where it is situated.

Q. Did you ever find out what land it had reference to? A. Yes, sir.

Q. What was it?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, the witness having stated that he had no personal knowledge and that it was information which he received long after the time he acted upon the letters received from Mr. Sweet, and, after closing the transaction, so far as Mr. Sweet was concerned and his connection therewith.

Q. I didn't understand you to say when you got this information, did I? A. No.

Q. Proceed then.

A. Lands in the vicinity of Idaho City, Center-ville, Pioneerville.

(Testimony of Harry S. Worthman.)

Q. Do you remember what this \$10,000 was put up for? A. To buy timber lands.

Q. Did they buy timber land with it?

A. I want to correct myself. They simply said to buy lands, to invest in lands.

Q. Did Senator Borah ever give you a copy of any contract between Steunenberg and Sweet?

A. He did not.

Q. Do you remember in your conversation with Mr. Borah about this contract anything to the effect that Senator Borah said there is but one copy to this contract and Mr. Steunenberg has that?

A. Mr. Borah just simply made the statement that he would see. He said I have no copy of this contract and I will see Mr. Steunenberg about the matter.

Q. Who did you get this \$10,000 from?

A. It was placed to the credit of William Sweet at the Bank of Commerce.

Q. Who placed it to his credit, if you know?

A. I don't know.

Q. Did anyone ever tell you that they had placed it to his credit? A. Yes.

Q. Who told you?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial and calling for hearsay evidence.

A. I was told by Mr. Kinkaid that it was placed there to his credit, and also told personally by Hal Coffin of the Bank of Commerce that it was placed there, and also received a letter from the bank to the

(Testimony of Harry S. Worthman.)

effect that it was placed there.

Q. Who told you who placed it there?

A. Nobody ever told me he placed it there.

Q. Did you learn whose money it was that was placed there?

A. It was Frank Steunenbergs money, I suppose.

Q. When was this money placed at the bank?

A. My best recollection is sometime in June, 1903. The letter itself from the bank notifying me it was placed there and introduced in the Borah trial, giving the exact date.

Mr. GORDON.—We haven't got it.

The WITNESS.—I am pretty sure that it is the correct date, along in June sometime.

Q. Was there a partnership between Steunenbergs and Sweet to take up timber lands, to take up or deal in lands?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and as asking the witness to testify to a conclusion of law, he not being shown to have any knowledge on the subject.

A. From Mr. Sweet's letters and from the original contract that I saw, I say yes.

Mr. FRASER.—We object to that part of the answer in which he says from the contract which he saw, the same is secondary evidence.

Q. Do you know where that contract is?

A. Which one?

Q. That you just referred to.

A. The one I refer to I saw the last time in this

(Testimony of Harry S. Worthman.)

courtroom at the Borah trial.

Q. Who brought it here?

A. The attorneys representing the Government.

Mr. KEIGWIN.—We will cause search to be made and will produce the contract if it is within the possession of the Government.

Q. I will ask you to tell what that paper is if you know. (Showing witness paper.)

A. That is a receipt signed by Robert McAfee, cashier of the First National Bank to me for escrow papers.

Q. Who drew that paper?

A. This paper was drawn by John Kinkaid.

Mr. GORDON.—We will offer it in evidence.

(Papers marked Plaintiff's Exhibit 23B-1.)

Mr. GORDON.—I will read it in evidence: "Boise, Idaho, June 9, 1903. Received of Harry S. Worthman, attorney, a certain escrow and contract running from William Sweet to Frank Steunenbergh conditioned for the payment of four thousand dollars by said Steunenbergh within eight months from May first, when said contract is to be delivered to said Steunenbergh, or if such payment is not made within said time said contract is to be re-delivered to said Sweet. (Signed) Robert McAfee."

Q. Now, was that the time the \$10,000 was released? A. Yes, sir.

Q. And that you were given the \$4,000?

A. No, the \$4,000 wasn't paid.

Q. Until eight months after that?

A. I think it was paid before the eight months

(Testimony of Harry S. Worthman.)

was out. I don't remember exactly, but that is my impression now.

Q. To whom was that \$4,000 paid?

A. Just simply placed to the credit of William Sweet at the First National Bank.

Q. Who placed it to the credit of William Sweet?

A. It must have been either Frank Steunenberg or one of his agents, because he had signed this escrow.

Q. Do you know who actually delivered the money to the bank? A. No.

Q. Now, was Sweet to give up his interest in this partnership or in this land or in claims to land in consideration of a certain amount of money?

A. Yes, sir.

Mr. BUNDY.—What do you mean by that, Mr. Gordon?

Mr. GORDON.—In this escrow contract and agreement.

Mr. BUNDY.—We object to the contents of the escrow contract and agreement as not the best evidence.

The WITNESS.—In this contract and agreement Mr. Sweet relinquished and released all his right, title and interest in and to any lands purchased by or on behalf of the partnership of Steunenberg and Sweet, released all claims and all transactions in relation thereto, etc., for the sum of \$4,000, to be paid eight months from that day, May 1.

Mr. FRASER.—What was the date of that escrow agreement? A. June 9, 1903.

(Testimony of Harry S. Worthman.)

Mr. GORDON.—Q. Do you know how much money Sweet had put into this partnership?

A. I think from his letters \$12,500.

Q. And had he signed a note with anybody for any more than that to go into the partnership?

A. I don't know. If I ever did know, I don't remember now.

Q. Was there a note for \$7,500?

A. I don't know anything about that.

Mr. GORDON.—I want to ask him with reference to this contract when I get it. If you will cross-examine him, I will take that up with him when you get through.

Mr. BUNDY.—Which contract do you refer to?

Mr. GORDON.—This contract which was here.

The WITNESS.—No, the contract which was in escrow is not here. That went to Steunenberg after the money was paid; but this contract I refer to was a contract drawn up in Judge Richards' office in relation to this timber matter and afterwards annulled by a second contract which, as near as—well, I don't know, but supposedly in the same general line. This contract we have here was annulled by the second contract that I tried to get a copy of from Mr. Borah.

Mr. GORDON.—That is the one I want to find.

Mr. FRASER.—Counsel for the defendant at this time move to strike out, first, all the evidence of the witness Worthman in regard to his making application and entering Government land, receiving title thereto, together with the exhibits consisting of the

(Testimony of Harry S. Worthman.)

land office documents and papers, for the reason that the same is incompetent, irrelevant and immaterial, do not tend to prove any of the allegations of the bill of complaint, and the testimony of the witness himself as to those matters proved conclusively that at the time he made entry of the land and the application to purchase, and at the time of the final proof that all the proceedings were legal and regular, no fraud was committed and no statute of the United States was violated by the witness in the acquisition of the title of this particular tract of land; and move to strike out all other evidence of the witness for the reason that the same is incompetent, irrelevant and immaterial and does not tend to prove any of the allegations of the bill of complaint; most of it is based upon hearsay and testifying to facts upon which the witness has no personal knowledge, and particularly that part of the evidence which has reference to his appearance in a certain contest proceeding wherein certain lands had been theretofore entered by James T. Ball, Harvey H. Wells, Albert E. Nugent and Arthur Anderson was contested, for the reason that there is no allegation in the bill of complaint that this defendant ever acquired any interest in any of the land involved in that contest.

Mr. KEIGWIN.—Q. Mr. Worthman, one more question. In the testimony which you have given to-day concerning your professional relations with Mr. Sweet, do you speak by his permission?

A. I do; that is, I was released by Mr. Sweet to bring these letters in the Borah, etc., you know. I

(Testimony of Harry S. Worthman.)

speak by his permission and these letters are produced by his permission.

Mr. GORDON.—Q. Mr. Worthman, did you ever know a man by the name of William Gibberd, do you know Elof Anderson and wife? A. I do.

Q. And John Youngkin? A. Yes.

Q. Did you speak with them about taking up timber claims?

A. I don't know about Anderson and his wife. I know that Youngkin and Gibberd both came to me and wanted to know who to go to if they wanted to take up claims.

Q. Who did you send them to see?

A. John Kinkaid.

Q. Did you prepare their papers for them?

A. I did.

Q. What papers did you prepare?

A. The applications. I also acted as Mr. Youngkin's attorney before the land office.

Q. Did he have a contest on his claim?

A. He didn't have a contest, but they were asking a good many questions at the time he proved up and he thought they were too many and telephoned me to come down there, and I came down and found out what they were asking him and told him to refuse to answer the questions.

Q. You say you drew the original papers, sworn statements, for all four of those persons?

A. I don't remember. I may have for Elof Anderson—I don't remember he and his wife—but the other two I did. They were both clients of mine.

(Testimony of Harry S. Worthman.)

Q. I mean for Youngkin and wife and Gibberd and wife? A. Yes, sir.

Q. Did you ever draw any other papers for them besides the original papers?

A. I don't know, but I think I probably drew their deeds also.

Q. And did you get the money for them with which to make final proof? A. No, sir.

Q. Did you tell them where to get it?

A. No, sir.

Q. Did you arrange for the sale of this property for them? A. No, sir.

Q. Did you go to see John Kinkaid about this property for them?

A. Not that I remember of. I sent them down there, though.

Q. Now, do you remember whether or not you drew this deed for them, to the best of your recollection?

A. I could tell if I saw the deed, but I drew quite a number of deeds for different parties.

Q. I will ask you if this deed, dated February 12, 1903, by Addie G. Gibberd and William H. her husband, to Horace S. Rand, to lots three and four, the south half of the northwest quarter of section twelve, township seven north of range seven east, Boise Meridian, is in your handwriting? A. Yes, sir.

Mr. GORDON.—Q. I will ask is all of that deed in your handwriting?

A. All of that deed is in my handwriting with the exception of the signatures and the acknowledg-

(Testimony of Harry S. Worthman.)

ment.

Q. Was Horace S. Rand, written in that deed by you?

A. Horace S. Rand written in that deed was by me but it was at a different time and evidently with a different pen.

Q. I have a deed by the same parties to the east half of the northwest quarter, the southwest quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section 12, township seven north, of range seven east, Boise Meridian. I will ask you if that deed is in your handwriting?

A. That is all in my handwriting with the exception of the signatures and the acknowledgment.

Q. Is that the same about the name of Rand being put in on a different occasion and with a different pen?

A. It was put in there with a different pen and at a different time.

Q. Mr. Worthman, who asked you to draw those deeds?

A. I think Mr. Kinkaid; either he or Mr. Gibberd. Mr. Gibberd and Mr. Youngkin were old clients of mine, had been for years.

Q. And when they first spoke to you about entering this land and when you sent them to Mr. Kinkaid, was anything said about selling it at that time?

A. No, sir.

Q. Was anything said about a prospective buyer?

A. No, sir.

Q. When they got ready to sell, did they come

(Testimony of Harry S. Worthman.)

back to see you?

A. I think Mr. Gibberd stopped me on the street one day and asked me if there was any show to sell his land, his and his wife's land.

Q. Did you direct him where he could sell it?

A. I told him to go and see Mr. Kinkaid. I think the conversation was this. He asked me if I had sold my timber entry and asked me who I sold it to and told him.

Q. Did you tell him how much you got for yours?

A. I don't remember whether I did or not.

Q. Do you remember the occasion of your drawing these deeds, and at whose instance they were drawn?

A. I can't tell to a certainty as to whether I drew them for Mr. Gibberd at his instance, or for Mr. Kinkaid. I had drawn deeds for Mr. Kinkaid on some of these timber entries, and I also drew others for clients of mine.

Q. Was the name of Rand in that deed when the party signed it?

A. Yes, sir, I think so—I don't know about that either. But evidently I didn't know at the time I drew the deed who the grantee would be, that is very evident, or the consideration. I think though that it was put in before the deed was signed.

Q. Did they come to your office to sell this property?

A. I think that Mr. Gibberd came up to me and said he had seen Mr. Kinkaid and Mr. Kinkaid had told him to have the deeds drawn, and he came to me

(Testimony of Harry S. Worthman.)

to have the deeds drawn and I asked him who the grantee would be, and he went down to see Mr. Kinkaid and in the meantime I drew the deed. The deeds were taken in to the notary to acknowledge. He came up with a slip of paper with the name of Horace S. Rand on and it was put in there.

Q. Did you turn the check for this property over to them?

A. I don't know how that was at all; whether they got their money straight, or whether they signed the deed and they were left with me and he came up and secured the deeds and gave me a check, I don't know.

Q. Do you remember whether or not you went out to see Kinkaid and got the money and came back?

A. That may have happened, but I don't know now. I have no recollection of just how that happened.

Q. I will see if I can refresh your recollection. Do you remember whether the first check that you brought back to your office when these people were there before the deed was signed was for \$750, and that they declined to take that, and you then went out and came back with a check for \$800, which they accepted?

A. I don't remember that. You can find out that probably better from Mr. Gibberd. I have no recollection of the transaction at all.

Q. Do you remember whose check it was that you gave them?

A. I can't even remember that, Mr. Gordon, that

(Testimony of Harry S. Worthman.)

I gave them a check. I might possibly, but I can't remember that at all, anything about that at all.

Q. You don't remember all the facts?

A. I can't remember anything about that.

Q. How much did you get for the work you did for these people, do you remember?

A. Why, different amounts, all the way from \$10 to \$25, according to whether the man was a new client.

Q. I mean these people that I have spoken to you about, these four? A. I don't remember.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Worthman, calling your attention to the original application which you made at the land office for the purchase of lands under the timber and stone act, dated April 5, 1902, and signed by yourself, I noticed in your statement you say, among other things, that I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself. At the time you filed that original application, that statement was absolutely and unconditionally true, was it not? A. Yes, sir.

Q. Calling your attention to your final proof made some time later, when the final receipt was issued to you, at that time had you made any agreement of any kind or character with any person what-

(Testimony of Harry S. Worthman.)

soever, by which any right, title or interest in the land you were then acquiring should inure to the benefit of any person other than yourself?

A. I had not.

Q. It is alleged in the bill of complaint in this action that you made your entry under the Timber and Stone Act for the benefit of John Kinkaid, the Barber Lumber Company and various other persons therein named. Is that allegation true or false?

A. It is false.

Q. Did you act in any matter for your friend Mr. Walker, who went with you at the time you entered this land, in the matter of selling it? Did you act for him?

A. Yes, when we agreed to sell I said that I would see Kinkaid. At that time I didn't know that Kinkaid was buying claims at all. I would see him and see if we could sell it, and he told me to sell him at the same time at the same price.

Q. Then did you represent Mr. Walker in making the sale?

A. Not as an attorney, just simply as a friend.

Q. But you arranged with Mr. Kinkaid for the purchase of both at the same time? A. Yes, sir.

Q. And agreed on a price for both?

A. Yes, sir.

Q. Did you prepare the deeds, or did Mr. Kinkaid? A. I think I did.

Q. Did Mr. Kinkaid pay you Mr. Walker's check, or do you remember about that?

A. I believe he came up to my office and handed

(Testimony of Harry S. Worthman.)

me my check and he went into Mr. Walker's office and Mr. Walker wasn't in his office and he came back and left Mr. Walker's check with me. We were right next door, on the same floor.

Q. You testified to suggesting that Mr. Anderson and Mr. Gibberd, others to go and see Kinkaid?

A. I didn't say anything about suggesting to Mr. Anderson; to Mr. Gibberd and Mr. Youngkin, yes.

Q. You suggested that they go and see Mr. Kinkaid?

A. Yes, sir.

Q. Was that after you had sold to Kinkaid?

A. Yes, sir.

Q. Were you operating or working for or in connection with Mr. Kinkaid as attorney, or otherwise?

A. No, sir.

Q. Did you have any reason for suggesting that they go and see Mr. Kinkaid any more than you had been successful in selling to Mr. Kinkaid?

A. That is all.

Q. You knew that he had been buying timber claims?

A. Yes, sir, Mr. Kinkaid and I were friends and very often—he sent Anderson up to me to have the deeds drawn.

Q. You had no reason at all except that?

A. No, sir.

Q. He was buying, and so far as you knew was the only one that was buying?

A. He was all that I knew about at the time that was buying.

Q. I think you said that when you concluded that

(Testimony of Harry S. Worthman.)

you and Mr. Walker would go up you were introduced to Pat Downs and he went up with you, did he? A. Yes, sir.

Q. Didn't have any talk with Mr. Downs as to what you were to do with this land when you got it did you? A. No, sir.

Q. You simply paid him for his services?

A. He was simply the cruiser, that was all. The only conversation we had was in relation to the claims, as to whether or not we would take up those claims or wait and see if we couldn't get better ones; but we finally concluded to take them.

Q. I think you said some time after your final proof you made your first deed, which, as you recall, was to Mr. Rand. About how long after was it that you made the first deed?

A. I made my final proof in June, and the nearest I can fix the date is either in August, September or October.

Q. And the sale at that time was suggested by the danger of forest fires? A. Yes, sir.

Q. Then, some time subsequent to that you were requested to make a new deed, and the reason stated was that the consideration was not agreeable to Mr. Kinkaid? A. Yes, sir.

Q. You understood that Mr. Kinkaid was buying this land for someone else? A. Certainly.

Q. He wasn't a man of means, was he?

A. No, sir.

Q. Going back to the contested claims there before the land office of Arthur Anderson, Ball and

(Testimony of Harry S. Worthman.)

others, Mr. Kinkaid, I think you said, was the first one that spoke to you about appearing for them?

A. Yes, sir.

Q. And at that time stated to you that they were friends of his?

A. Yes, sir.

Q. And that was about the first of the final proofs that came on to be made in the Basin here, were they not; or do you know about that?

A. I don't know.

Q. The lands involved in those contents are not involved in this action so far as you know, are they; or have you looked over the bill?

A. No, I don't know.

Q. I think you said Mr. Kinkaid paid you \$150, \$50 by cash and \$100 he gave you a promissory note.

A. Yes, sir.

Q. Did you understand Mr. Kinkaid had any interest in those claims?

A. No, I do not.

Q. Did he say to you that he was interested in buying claims at this time and was very much interested in knowing whether the law was being violated?

A. No, he didn't say anything about it. I knew he was buying claims and he just simply said these were friends of his and it didn't seem strange to me, because he had lived up there.

Q. Now, did he say to you at the time he gave you this note why he thought Steunenberg would be willing to pay for some of the expenses of some of these contests?

A. No, sir.

Q. Did he say to you then in substance that they were interested in having a test case made of these,

(Testimony of Harry S. Worthman.)

or anything to that effect?

A. Not that I know of.

Q. You have testified, Mr. Worthman, relative to your connection with Mr. Sweet. I haven't had time to read the large number of letters that have been put in, but was all of your information which you had relative to the Sweet affairs, about which you have testified, derived from those letters at that time?

A. At that time, yes, sir.

Q. And up until you had closed out the transaction and recovered the money?

A. Up until the time just prior to the time I made the pre-emptory demand for the immediate settlement of the matter.

Q. Which was about when, do you remember?

A. That was along the day before or two days before June 9, 1903. At that time I realized I had it in my power to compel the payment of that money.

Q. That was the \$10,000 that you were trying to get?

A. Yes, sir.

Q. Is that the \$10,000 that you have spoken of as money of Sweet's in Steunenberg's hands for the purpose of buying lands?

A. Yes, sir.

Q. Now, as a matter of fact, Mr. Worthman, that \$10,000 was in the bank, wasn't it?

A. It was in the bank, that is true, but just what the arrangement was that Steunenberg could use it and did use it and had used it, and for what purpose, I don't know.

Q. You don't know whether it was used to buy land with or not?

(Testimony of Harry S. Worthman.)

A. I don't know anything about that.

Q. And if it was used to buy lands, you don't know what lands, do you?

A. Not of my own knowledge. At that time I didn't know.

Q. Could you give us now the particular quarter sections that that money was used to buy?

A. No, sir.

Q. I wish you would look over the bill of complaint in this action, if that be necessary, and tell us as to whether or not you know as to whether any of Mr. Sweet's money, or any money that Mr. Steunenberg held under any arrangement of any kind with Mr. Sweet or anyone else, was used to purchase any or all of the descriptions there set out?

A. I don't know.

Q. It wouldn't help you to look over it?

A. No.

Q. You have no means of knowing whether the \$10,000 and the \$4,000 about which you have testified, wherever they were used, were for lands described in this complaint or not?

A. No, sir.

Q. And you don't so testify?

A. No, sir.

Q. Now, you have testified in answer to one question that there was a co-partnership contract existing between Frank Steunenberg and William Sweet for the purpose of buying lands, out of the proceeds of which Mr. Sweet was to be reimbursed a certain sum of money, and the profits divided. Do I correctly state your evidence on that subject?

A. Yes, sir.

(Testimony of Harry S. Worthman.)

Q. That contract was one that I think you said was originally drawn in Mr. Richard's office?

A. Yes, sir.

Q. Did you see that contract?

A. I had it in my possession.

Q. That original contract was annulled?

A. Yes, sir.

Q. Then, as I understand you, a new contract was drawn by Judge Richards again?

A. No, I don't know who it was drawn by.

Q. Did you ever see the new one?

A. I never did.

Q. Did you ever see a copy of the new one?

A. I never did.

Q. Then your evidence is based upon a supposition that it was a general contract like the first one?

A. It was based from what I get from the Sweet letters.

Q. And the option about which you have testified is based on the Sweet letters, from which you have assumed that a new contract of partnership was made?

A. My information, of course, is entirely from the Sweet letters.

Q. Then your evidence here, Mr. Worthman, as to any contract of co-partnership, is based on your conclusion drawn from the Sweet letters in evidence?

A. The Sweet letters and the final termination of the whole matter.

Q. Did you ever hear, Mr. Worthman, from anyone that that \$10,000 of Mr. Sweet's, which was in

(Testimony of Harry S. Worthman.)

Governor Steunenberg's hands, was held by him to protect Governor Steunenberg against any titles that might prove defective?

A. The statement is familiar to my mind.

Q. I think I can refresh your recollection. Don't you know, or didn't you learn during those negotiations, that Mr. Sweet, during the year 1901, and during the early part of 1902, was investing money in timber lands in this Basin by himself and for himself, prior to Governor Steunenberg's connection with it?

A. No, I don't know anything about that.

Q. Didn't you learn that somewhere in the early part of 1902, Mr. Sweet sold out his interest to Governor Steunenberg for a considerable sum of money, and Governor Steunenberg was to retain possession of the purchase price as a guarantee of the titles which had been conveyed to him?

A. I have heard of that before. It is in my mind since my memory was refreshed, but as to whether or not I knew that at that time, or know it subsequently through these trials, I don't know.

Q. Didn't you understand that this \$10,000, about which Mr. Sweet was complaining and which was then in Governor Steunenberg's possession, and in the bank supposedly, was held by the Governor for that very purpose as a guarantee of titles which Governor Steunenberg had bought from Sweet?

A. I don't know whether I knew that then or not.

Q. You have heard it since, of course?

A. I either knew it then or have heard it since.

(Testimony of Harry S. Worthman.)

Q. And you heard that in the same way you have heard these other things, in your relations with the Sweet and Steunenberg transactions?

A. Yes, sir.

Q. And speaking from your knowledge at present, that would be your evidence, would it not, that that \$10,000 was held by Governor Steunenberg to guarantee him against loss from defective titles which he had bought from Sweet. Isn't that true?

A. I think that is correct.

Q. Mr. Sweet was really complaining because of the fact that the time had gone by and it ought to be turned over, because the danger of defective titles had passed, was he not?

A. You will find, by reading Mr. Sweet's letters that they are very vague, and you will find also that he didn't inform me fully.

Q. Well, to make a long story short, at present that is your understanding, whenever you get it, that that \$10,000 was held as a guarantee fund?

A. I have heard that wherever I got it, or when I got it, I don't know.

Q. In your conversation with Mr. Borah, did you understand that Mr. Borah was acting in that matter as the attorney or as the friend of Governor Steunenberg?

A. I didn't understand anything about it at all, except that I was told to go over there. They said the contract was drawn in his office; didn't say whether Mr. Borah drew it or who drew it, and I went over there to get a copy.

(Testimony of Harry S. Worthman.)

Q. Do you recall about the last time you went to see Senator Borah on the matter that he told you that he had seen the Governor and the Governor told him that that was a personal matter and that he would tend to that himself?

A. That might be so.

Q. You don't recall it? A. No.

Q. The Mr. Gibberd that you have spoken of here is a man of means, is he not?

A. Yes, sir.

Q. Substantial citizen here? A. Yes, sir.

Q. And, as I understand, had been your regular client for quite a while? A. Yes, sir.

Q. Was that also true of Mr. Youngkin?

A. Yes, sir.

Q. Is he a man of means here?

A. I don't know exactly how he is now, but he was a freighter and had three or four wagons, and his own home, etc.

Q. All of this evidence that has been drawn out, Mr. Worthman, relative to the Sweet-Steunenberg relations is based upon what other people have told you and not from personal knowledge, told you or written you, and not from personal knowledge?

A. Of course, the beginning of it was just Mr. Sweet's letters, and one reason why I am careful in testifying is that I got a great deal from my own inductions, and at the present time it is very hard for me to segregate it.

Q. No part of your evidence as to their relations is based upon any personal knowledge upon your

(Testimony of Harry S. Worthman.)

part derived from hearing their contract or conversations with themselves?

A. It is based only on the letters of Mr. Sweet and the first contract, which I had in my possession, which was subsequently annulled, and another one in its place which I have never seen.

Q. So that, to answer my questions direct, all of your evidence as to their relations is based upon information given you either by letter or by word of mouth of other people, and on which you have no personal knowledge?

A. Yes, sir.

Q. And you are not attempting, assuming to testify that any of the lands involved in this suit are in any way directly affected by the partnership of Steunenbergh and Sweet, if one existed?

A. I don't know of my own knowledge.

Q. It may have related to entirely different lands and an entirely different part of the country so far as you know?

A. So far as I know of my own knowledge.

Adjournment was here taken until two o'clock.

Court met pursuant to adjournment at two P. M., Saturday, February 6, 1909, the Examiner and counsel for the respective parties being present.

Mr. GORDON.—If the Court please, there was a contract here testified to as introduced as an exhibit in the Borah trial. I understood that that was a copy. I understand from these gentlemen that it was the original. I have a copy here that we found among the office files, and Mr. Fraser and myself have compared it with the original as it was read in

(Testimony of Harry S. Worthman.)
the Borah trial and I desire to offer that.

Mr. FRASER.—We have compared it but we don't know that the record is correct.

Mr. GORDON.—Mr. Worthman, can you read this over and see if it is a copy of that contract (hands the witness paper).

A. I can say whether it is a substantial copy. I can't say whether it is exact.

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, no foundation having been laid.

Mr. KEIGWIN.—We offer this copy as being a copy of the contract and counsel for the complainant state that the original of this contract is not in their possession, or in any of the files subject to their control so far as can be ascertained by diligent search of such files, and that they will at a later point offer additional evidence to account for the absence of the original contract.

(Copy of contract marked Plaintiff's Exhibit 23B-2).

Mr. FRASER.—Counsel for the defense move to strike out the statement of counsel for complainant as incompetent, irrelevant, and immaterial, and as not laying any foundation or alleging in any manner to lay the foundation for the introduction of the secondary evidence of a copy of the original contract heretofore referred to by the witness Worthman.

Mr. GORDON.—Q. Mr. Worthman, did you answer that question with reference to whether or not that is a copy of the original?

(Testimony of Harry S. Worthman.)

A. To the best of my knowledge it is.

Mr. BUNDY.—Copy of what original? The original Judge Richards made?

A. Yes, sir.

Mr. BUNDY.—Q. And which was annulled?

A. Yes, sir.

Mr. BUNDY.—Q. So this is in your judgment a substantial copy of a contract which was annulled?

A. Yes, sir.

Mr. BUNDY.—Q. This particular contract was abrogated by the parties, as you understand?

A. Yes, sir.

Mr. FRASER.—Q. The terms or conditions of it were never carried out or complied with?

A. I don't know that.

Mr. KEIGWIN.—Q. Do you remember the terms of the original contract in your possession with sufficient distinctness to state whether or not this is in substance the same contract? A. I do.

Mr. FRASER.—We object as immaterial, irrelevant and incompetent and as secondary evidence, no foundation having been laid for the introduction of secondary evidence.

The WITNESS.—I believe that is a copy of the original contract from my knowledge of the other one.

Q. And your memory?

A. And my remembrance.

Q. (By Mr. BUNDY, Continuing.) Mr. Worthman, in my former cross-examination, I asked you a few questions relative to this \$10,000 being on deposit

(Testimony of Harry S. Worthman.)

as a guarantee fund rather than as a fund to buy land with. For the purpose of refreshing your recollection, let me call your attention to the letter written by Mr. Sweet to under date of January 5, 1903, in which he says, among other things—February 5th, 1903, I mean—in which he says among other things: “The time has expired long ago in regard to the agreement of the governor’s responsibility to the eastern people.” Do you understand that Governor Steunenberg had incurred some responsibility to eastern people on account of titles and that this \$10,000 was held to protect him on his guarantee?

A. I understand that now; I know that now. As to whether I knew it then or not I couldn’t say, but I do know it now.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Worthman, in reply to the last question of counsel for the defendants you said you understand something now. Where do you get your understanding that this \$10,000 was put in to secure Steunenberg as to titles?

A. I can’t tell you except during—just before dinner—during the cross-examination, the questions asked brought other things to my mind, but as to where it comes from I don’t know; but at the time Sweet was writing to me those letters I knew nothing about this matter at all, and you see by the letters from beginning to end he kept unfolding more all the time.

Q. Did anybody ever tell you that that money

(Testimony of Harry S. Worthman.)

was to secure Steunenberg for the validity of titles?

A. I don't know.

Q. Do you think they did?

A. It is so in my mind, for the reason, as I think of the matter at the present time, it was always spoken of as the release of that money at the bank. The letters speak of that; not the repayment of it, but they speak of the release.

Q. As a matter of fact, don't you know that the only money that was put into the transaction between Sweet and Steunenberg, Sweet put in the money?

A. No, I don't know anything about that. My whole knowledge of this is derived from those letters, and that was the end of it until after the transaction was over, and then things gradually came just naturally to my mind.

Q. Didn't Sweet put in thirty odd thousand dollars into that transaction?

A. That was before my time with Sweet.

Q. Did Sweet ever tell you that?

A. Not unless it is in those letters.

Q. Did you ever see Sweet to talk to him about that transaction?

A. Never since he wrote those letters.

Q. Did Sweet ever tell you how much money he put in with Governor Steunenberg to purchase land?

A. No, sir.

(Witness excused).

[Testimony of W. H. Gibberd, on Behalf of the Complainant.]

W. H. GIBBERD, produced as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are William H. Gibberd, are you?

A. Yes, sir.

Q. Mr. Gibberd, did you take up a timber claim under the Timber and Stone Act in August, 1902?

A. I don't remember the date. I know I took up a timber claim.

Q. You took one up? A. Yes, sir.

Q. Did you ever take up but the one?

A. That is all.

Q. What is your occupation, Mr. Gibberd?

A. Well, I was at that time superintendent of the Settler's Irrigating Canal.

Q. What is your occupation now?

A. Well, I am not anything in particular. I am somewhat engaged in that kind of business now, but over to Snake River.

Q. I will show you timber and stone sworn statement of William H. Gibberd, dated August 29, 1902, and ask you if you signed and filed that paper in the land office? A. Yes, sir, that is mine.

Q. Who first spoke with you about taking up a claim under the Timber and Stone Act?

A. Why Mr. Worthman and I was talking about it.

Q. Do you remember what he said about it?

(Testimony of W. H. Gibberd.)

A. Well, I was asking him in regard to the law governing such cases, taking up timber claims.

Q. Did he take you to see the claim?

A. No, sir.

Q. Did he direct you to some one to show you the claim?

A. Yes, he told me there was parties that if I wanted a timber claim Mr. Downs could locate me on a timber claim.

Q. Did you go to see Mr. Downs?

A. Yes.

Q. The same day you saw Mr. Worthman?

A. No, it was two or three days after that.

Q. Where did you see Mr. Downs?

A. Up in the timber on Crooked River, that is, not on the river; I first saw him at Mose Kempner's ranch up there.

Q. Did you communicate with Mr. Downs before you went there to the effect that you were coming up?

A. No, sir.

Q. Did you go alone or did someone go with you?

A. There was Mr. John Youngkin and Elof Anderson and his wife went with me.

Q. Had you known them before that time?

A. Well, no. I knew him, that is, I knew he was Anderson as I passed him on the street.

Q. Didn't know him to talk with?

A. No.

Q. Who arranged that party?

A. I don't know.

Q. And did you hire the team and see the other

(Testimony of W. H. Gibberd.)

people about going with you, or did they come to see you?

A. Why Mr. Youngkin and I, were interested in together, that is, I was interested in his freight teams; I had put up money to buy his freight teams with, and we was interested together, and we talked about going up there and taking a timber claim, he and I.

Q. Was that before you had seen Mr. Worthman?

A. No, that was after.

Q. Did you meet these people at Mr. Worthman's office on any occasion that you called there?

A. No, I don't remember how we got together on that, but it seems to me that Mr. Elof Anderson came to me about it, that is if I recollect right, that we would go up there together. I may be mistaken; I am not positive about that, but I think that is the way it was, and I think I went and got the team.

Q. And did you see or talk with anyone concerning the arrangements to be made for going to see this land, besides Mr. Worthman and these other gentlemen, before you started? A. No.

Q. Where did you go, did you say; up to Crooked River? A. Yes, sir.

Q. At what ranch did you stop?

A. Mose Kempner's.

Q. What time of day did you arrive there?

A. About eleven o'clock, I think it was.

Q. And had you known Mr. Downs before that time?

A. No, that is I never—I knew of him, but wasn't

(Testimony of W. H. Gibberd.)

personally acquainted with him.

Q. Did you introduce yourself to Mr. Downs?

A. I told him I had come up there to see if I could get a timber claim.

Q. Was anything said at that time as to how much you would pay him?

A. I asked him how much he would charge.

Q. How much did he tell you? A. \$25.

Q. How far from Mose Kempner's ranch did you go to view this land?

A. I don't know exactly; it was about half a mile or such a matter, half or three quarters.

Q. Did he take you out and show you a piece of land and say that was the piece for you to take?

A. Yes, sir, he did.

Q. Did he give you a description of it there?

A. Yes, sir.

Q. Write it out for you?

A. Yes, sir, I saw the corners myself.

Q. I know, but did he write a description for you to put in your filing papers? A. Yes, sir.

Q. And did you return the same afternoon?

A. Why no, I don't think we did; I think we stayed there over night.

Q. Well, how long after you returned did you have this statement drawn up that you took to the land office? A. The one I just saw?

Q. Yes? A. I don't remember.

Q. Was it the day you returned, or the next day, or a week or a month after?

A. I think it was the next day.

(Testimony of W. H. Gibberd.)

Q. Who prepared that paper for you?

A. Mr. Harry Worthman.

Q. What did he charge you for preparing the paper?

A. There wasn't anything said about that particular paper. He was my attorney, had been for about fifteen years.

Q. Then you took the paper to the land office?

A. Yes, sir.

Q. And in the course of several months you went there and made your final proof?

A. Yes, sir.

Q. And they gave you a receipt for your money?

A. Yes, sir.

Q. How long after you got your final proof did you talk with anyone about selling?

A. I don't know; a couple of months or such a matter.

Q. Then who did you speak with?

A. Harry Worthman.

Q. And were you trying to sell it to him, or have him sell it to some else for you?

A. I went to him, and I told him I understood they were selling their timber claims up there.

Q. Who did you mean by they?

A. Why, different parties that located up there.

Q. Did you know to whom they were selling?

A. No, I just heard a rumor that they were selling their timber claims.

Q. No one had spoken to you about buying this claim between the time you located and the time you

(Testimony of W. H. Gibberd.)

went to see Worthman?? A. No, sir.

Q. There wasn't any understanding that Worthman would find the purchasers for you when you entered at all? A. No, sir.

Q. Continue your statement as to what he said about these claims?

A. I told him I believed that if they was selling their timber claims up there, I believed I would sell mine. If they sold their timber claims and they got to cutting the timber up there I would have to stay up there and keep them off with a club. I asked him if he knew of anybody that I could sell the claim to, and I told him that if he heard of anybody to let me know. It run along a week or two, or such a matter, and I saw him again, and he said yes that I could sell it.

Q. Did he tell you how much he thought you could sell it for?

A. No, not at that time, not just then. Finally—I don't know the exact words that was used, but we went up into his office—no, not at that time either—it run along a few days after that and I told him I wanted my wife's sold, too, and Mr. Youngkin and Mrs. Youngkin made up their minds that they would sell theirs too.

Q. You told Mr. Youngkin and his wife that you thought they could sell? A. Yes, sir.

Q. No person was named as a prospective buyer at that time? A. No.

Q. Proceed.

A. And in a few days after that I saw Mr. Worth-

(Testimony of W. H. Gibberd.)

man again and he said, yes, come down to the office and make out a deed, and I went and told Mr. Youngkin and Mrs. Youngkin and my wife.

Q. Did he tell you to go down and make a deed before anything was said about price?

A. Yes, he said he would make out the deed for us.

Q. Before it had been mentioned to you what you were to get for the property or to whom it was to be sold?

A. Yes, sir.

Q. Did he tell you he had a buyer for it?

A. No, I thought he had a buyer.

Q. So you went to his office?

A. Yes, sir.

Q. Was Mr. Youngkin there?

A. Yes, sir, the four of us.

Q. And they went because you had conveyed this knowledge to them?

A. Yes, sir.

Q. Did you sign a deed at the office at that time?

A. Yes, sir.

Q. Was the deed in blank or did it have the name of the man in it to whom you were to sell the property?

A. I think he made out the deed, and if I remember right, the name was left blank, but it seems to me he told me I had to go down to Mr. Kinkaid's office or some place, and I told him I didn't know Mr. Kinkaid and he had as much time as I did to go down; he didn't want to go and I didn't want to go, and finally he went down.

Q. How long was he gone?

A. I don't remember just how long.

(Testimony of W. H. Gibberd.)

Q. Well, ten minutes or half a day?

A. No; fifteen or twenty minutes, or such a matter.

Q. When he returned what was the conversation you had?

A. Then we jangled about the price.

Q. That was the first that had been said about price?

A. Yes, sir.

Q. You had already signed the deed at that time?

A. No, I hadn't signed it at that time.

Q. Just had the deed there?

A. Yes.

Q. What price was offered for your claim then?

A. He said \$750 a claim was the best he could do.

Q. Did he have the check at that time to pay you the \$750?

A. I don't remember as to that; it seems to me there was a check, too.

Q. At that time?

A. Yes.

Q. For \$750?

A. Yes.

Q. And did you tell him you wouldn't take \$750?

A. I did.

Q. The other three were all present at this conversation?

A. I think they were.

Q. And was the same offer made to them?

A. Yes, if I remember right, we was all together, the same price.

Q. Did he have checks for all of them at that time, as you remember?

A. I don't remember distinctly about that.

Q. You concluded you wouldn't take \$750 for your claim?

(Testimony of W. H. Gibberd.)

A. No, sir; I told him they could pay me \$800 for my claim and my wife's or leave it alone.

Q. What happened then?

A. He went out again. I told him that if the parties wanted my claim and my wife's for \$800 they could have it.

Q. Did he bring a check for that amount?

A. Yes, sir; I think so.

Q. Do you know whose check it was?

A. I don't remember.

Q. Then when was it that he put in the name in the deed; was it put in before you went away?

A. I don't remember, but it seems to me it was at that time.

Q. Was that the only deed you ever signed for this property?

A. No, I signed another paper. I don't know what that was.

Q. Was that after this?

A. No, it was at the same time, I think.

Q. Do you know what the other paper was that you signed?

A. No, I don't. Well, I think it was something to the effect that if there wasn't any difficulty or anything—to the effect that I was to reimburse them or something of that kind. I don't exactly remember. I didn't pay so much attention to the other part of it.

Q. What was the object in signing a paper to that effect? Didn't you think you had title to this to convey?

A. I don't remember what my object was.

(Testimony of W. H. Gibberd.)

Q. You weren't very anxious to sell it, were you?

A. Not in particular; I was if I got my price, what I wanted for it.

Q. Did they ever ask you to sign another deed?

A. I don't remember, if they did.

Q. Was that the last you did with reference to the transaction; signed the deed in Worthman's office?

A. That is my recollection of it, yes, sir.

Q. Had you ever met Mr. John I. Wells in this transaction?

A. No, sir, not that I remember of.

Q. I notice on the publication you gave the names of some witnesses; did you suggest those names as witnesses yourself or who suggested them?

A. Well, I don't remember as to that; I think that we talked that over as we was going up, that we could be witnesses for each other.

Q. Who did you talk it over with?

A. Mr. Youngkin and Mr. Anderson and his wife.

Q. As you were going to the land office?

A. No, as we was going up to see the timber.

Q. Have you ever met John I. Wells?

A. Yes, I have.

Q. Since you made your entry or before?

A. It was some time after I sold my claim I met Mr. Wells.

Q. With reference to this claim?

A. No.

Q. Who suggested that John I. Wells would be one of your witnesses when you made your advertise-

(Testimony of W. H. Gibberd.)

ment? Did Mr. Worthman go to the land office with you? A. Yes, sir.

Q. You don't know whether he suggested him or not? A. I don't know.

Q. Did you know that John I. Wells' name was on there?

A. Not that I remember of, no, sir.

Q. I will show you deed, dated February 12, 1903, made by William H. Gibberd and his wife to Horace S. Rand, and ask you if that is your signature and your wife's signature to the deed?

A. Yes, sir.

Q. And that is the deed you signed the day that you received your money in Mr. Worthman's office?

A. Yes, sir.

Q. And you don't remember whether that name was in there at that time or not?

A. I don't remember distinctly; I know we had some talk about that at the time, and I think that is what he wanted me to go down to Kinkaid's or some place about, that name, but I didn't go because I wasn't acquainted with the party.

Q. Did you ever know Mr. Horace S. Rand?

A. No, never saw him.

Q. Did you ever meet Mr. Kinkaid?

A. I did afterwards, yes, sir.

Q. Whereabouts?

A. I think in his office.

Q. What did you go to his office for?

A. I went to his office in regard to trying to sell Mr. and Mrs. Ross' claim.

(Testimony of W. H. Gibberd.)

MR. GORDON.—We offer in evidence the sworn statement of William H. Gibberd, dated August 29, 1902, the testimony of the claimant before the land office, the cross-examination thereto, the notice of publication, the register and receiver's receipts, dated December 3, 1902, and the deed of William H. Gibberd and wife, Addie G. to Horace S. Rand, to the east half of the northwest quarter, the southwest quarter of the northwest quarter, the northeast quarter of the southwest quarter, of section 12, township 7 north of range 7 east, Boise Meridian. We also offer the patent issued to Mr. Gibberd for the same property.

(W. H. Gibberd papers marked 24A to 24K incl.)

Cross-examination.

(By Mr. BUNDY.)

Q. You said, Mr. Gibberd, that you had heard that the people who had been locating up there in the Crooked River Country were selling their claims?

A. Yes, sir.

Q. I will ask you as to whether or not along about that time a great many of the people here in Boise had been locating claims up in the Crooked River country, as you understood it?

A. I don't know as to that.

Q. You knew there were some?

A. Some, yes, sir.

Q. It was a matter of common knowledge up and down the street here that there were timber and stone entries that could be had up in that country?

A. Yes, sir.

(Testimony of W. H. Gibberd.)

Q. And isn't it true of your own knowledge that a great many of the best people here in Boise were availing themselves of their rights under the Timber and Stone Act about that time?

A. I think that is where I got my information.

Q. You at that time, as I understand it, were a man of property and engaged in business here?

A. Yes, sir.

Q. There was a good many people here, business men, and professional men, and people of financial standing here in Boise that about that time were exercising their rights, were they not?

A. That is where I got my information from that these claims was to be taken.

Q. Kinkaid, who has been mentioned here, was known, and you knew him, subsequently at least, as a man who was buying these claims at that time?

A. I knew him later.

Q. And he was understood to be here, was he not, a man who was buying timber claims for somebody?

A. Yes, I understood that.

Q. A good deal has been said about negotiating over price. You wanted \$800. I will ask you as to whether it wasn't general knowledge up and down the street that \$800 was what they were paying for claims, or did you know about that?

A. I understood that some of them was selling for less than that and some was getting that.

Q. It was rather a fixed price. It wasn't the subject of negotiation for each particular tract. They paid about the same for good ones as for poor ones?

(Testimony of W. H. Gibberd.)

A. I understood they paid so much per claim.

Q. It wasn't based on so much per acre or thousand feet? The universal practice was so much per claim?

A. So much per claim.

Q. It is alleged in the bill of complaint here, in this case we are trying, Mr. Gibberd, that you made your timber and stone entry, which you have testified about, under and pursuant to an agreement with John Kinkaid, Barber Lumber Company, and a lot of other people, by which you were to turn it over to them when you got title. Is that true or false?

A. I didn't know any of those people.

Q. Is that allegation true or false?

A. It is false, absolutely false; I didn't know any of them.

Q. At the time you made your original application to purchase and at the time you finally sold it, had you any outstanding agreement with anybody by which they would get or were to get any right, title or interest in it?

A. No, sir, I hadn't any idea when I would sell it, and wasn't very particular as far as I was concerned.

Q. And you used your own money to prove up with?

A. Yes, sir.

(Witness excused.)

[Testimony of Addie G. Gibberd, on Behalf of the Complainant.]

ADDIE G. GIBBERD, produced as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your full name, Mrs. Gibberd?

A. Addie G. Gibberd.

Q. Are you the wife of William H. Gibberd?

A. I am.

Q. I will ask you if you took up a claim on the Crooked River under the Timber and Stone Act some time in 1902? A. I did.

Q. I will ask you if that is your signature to the sworn statement of Addie G. Gibberd, dated September 8, 1902 (showing witness paper)?

A. That is my signature.

Q. And did you file this paper in the land office the day it is dated there?

A. I didn't notice the date there.

Q. Did you get the paper the same day you filed it?

A. I think I did. I filed it in the land office; I suppose that is the paper.

Q. Who first spoke with you about taking up a claim under the Timber and Stone Act?

A. Mr. Gibberd and Mr. Youngkin, the way I first heard of it.

Q. Did you understand what you were to do with it?

A. When I took the timber it was my own.

(Testimony of Addie G. Gibberd.)

There was nothing in regard to what I was going to do with it.

Q. You just purchased it? A. For myself.

Q. Do you remember who prepared that paper for you (showing witness paper)?

A. Lawyer Worthman, I believe.

Q. Who went with you to Mr. Worthman's office?

A. When we came down from the mountains?

Q. Did you go to Mr. Worthman's office before you went up in the mountains?

A. I don't think I did. I don't remember that I did. It was after I came down from the timber.

Q. When you went up in the mountains to look at this timber who did you meet there?

A. Must I tell all the ones I saw while I was up there?

Q. No, I just mean with relation to this timber?

A. That went with us over the timber?

Q. Yes.

A. There was Mr. Youngkin and Mrs. Youngkin, and Mrs. W. H. Martin, Mrs. Henrietta Martin.

Q. And who showed you over the timber?

A. Mr. Youngkin.

Q. Did somebody locate you on your property?

A. Mr. Downs had given Mr. Youngkin the numbers of these claims. He was busy locating other parties that day. There was quite a number and he went with other parties during the day, and he gave Mr. Youngkin the numbers and Mr. Youngkin took Mrs. Youngkin and I over this timber that we took.

Q. Over the timber that Mr. Downs had given a

(Testimony of Addie G. Gibberd.)

description of? A. Yes.

Q. Then Mr. Youngkin took you out and showed you your claim and took Mrs. Youngkin out and showed her her claim?

A. We went all together. I had them as witness, Mr. Youngkin, Mrs. Youngkin and Mrs. Martin.

Q. You all came back together?

A. We all came back to the Kempner house.

Q. Did you remain there that night?

A. We did.

Q. Then came back to Boise that day?

A. We did.

Q. Did you go to Mr. Worthman's office that day?

A. I don't remember whether it was that day or the second day. We were tired from the trip, and possible it might have been the second day, but I think it was the next day.

Q. Did you all go to Mr. Worthman's office? Were you all there at the same time?

A. Yes, I believe we were all there at the same time.

Q. And did Mr. Worthman prepare the papers for all of you at that time?

A. I couldn't say whether he did at that time or not.

Q. Did you all get your papers at that time?

A. Yes, sir.

Q. You were there, you and your husband?

A. Mr. Gibberd was not with—he did not go in at that time with us. He had taken his timber before, but Mr. Youngkin took his team and took us up there,

(Testimony of Addie G. Gibberd.)

and was one of my witnesses, and that is why he was with us. Mr. Gibberd had taken his previously.

Q. Do you know how long before that he had taken his?

A. I don't think it was more than two weeks.

Q. And then you went to the land office with this paper and filed it? A. Yes.

Q. Then in the course of time you made your final proof? A. Yes.

Q. And where did you get the money with which you made your proof?

A. I had the money. It was my own money.

Q. Was it your money or did you get it from your husband?

A. It was mine. I had money of my own. I helped to buy property and it was my own.

Q. Did you have it in your own name in the bank?

A. No, sir, it wasn't in my name. It was put in the bank in my husband's name.

Q. And you had had it in the bank some time?

A. I don't remember how long.

Q. Approximately how long?

A. I couldn't tell you that. I had had money in the bank. It had been all drawn out to purchase property with and put in again, so I couldn't tell you how long it was in the bank. I don't remember.

Q. How long before you bought this property had you sold some other property?

A. Perhaps it was—it might have been eleven years. It had been some time since this property was sold and other property bought.

(Testimony of Addie G. Gibberd.)

Q. You didn't have the money in the bank with which you bought the other property, I assume?

A. Oh, no—that money for eleven years—but at the time we purchased this property.

Q. I am trying to find out your best remembrance of how long you had had the money in the bank with which you purchased this particular tract.

A. I couldn't tell you that.

Q. Was it a week, a month, six months, a year, or a number of years?

A. It surely was several years.

Q. What bank did you have it in?

A. We usually dealt with the Capital State Bank.

Q. Do you know whether this money was in the Capital State Bank or not?

A. I think it was; I think it was at that bank.

Q. Do you remember whether you paid cash at the land office or had a certificate of deposit or a check?

A. It was a check.

Q. Do you remember whose check it was?

A. I don't know as I quite understand.

Q. I mean who had signed the check that you gave to the land office?

A. I think Mr. Gibberd signed the check, because when it came time to give the gentleman at the land office the money I hadn't the money with me, and he went to the bank and drew it and brought it back and gave it to Mr. Garrett.

Q. You and Mr. Gibberd went to the land office together?

A. Yes, that day I proved up.

Q. And when you got there you discovered that

(Testimony of Addie G. Gibberd.)

you didn't have your money with which to prove up?

A. And Mr. Gibberd went out to the bank and got the money.

Q. Did Mr. Gibberd prove up at the same time that you did, or had he proved up previously?

A. He had proved up before.

Q. I show you testimony of Addie G. Gibberd taken before the land office and ask you if that is your signature (showing witness paper)?

A. That is.

Q. Did you know Mr. John I. Wells? Do you know John I. Wells now? A. No, sir.

Q. Had you ever seen him?

A. I never have.

Q. When you were at the land office to make your final proof do you remember them giving you a receipt showing that you had paid the money into the land office? A. Yes, sir.

Q. Do you remember what you did with that receipt?

A. No, I don't remember what was done with that.

Q. Later on you sold this property?

A. Yes.

Q. Do you know who you sold it to?

A. I do not.

Q. Who conducted the negotiations for the sale of this land for you?

A. Mr. Worthman, I suppose; he made out the papers.

Q. Had you talked with Mr. Worthman, or did

(Testimony of Addie G. Gibberd.)

your husband transact this for you?

A. Mr. Gibberd saw about it.

Q. And then you and your husband went to Mr. Worthman's office? A. Yes.

Q. Do you remember who was there at the time you were there besides your husband and yourself and Mr. Worthman?

A. Mr. Youngkin and Mrs. Youngkin.

Q. Was anything said at that time about the price you were to receive for this property?

A. There was.

Q. Tell me your best recollection of it.

A. Mr. Worthman had said \$750 was a good price for the land, and Mr. Gibberd said he wouldn't let his land go for \$750; he wanted \$800 for his claim and mine or we wouldn't let them go, we would keep them first, we didn't have to sell them and we would keep them.

Q. When you went there had Mr. Worthman already prepared these deeds, were they there when you got there?

A. I think they were, though he left the room, he went out of the office, went away somewhere, and then came back.

Q. Well, did he go away before there was a discussion about what the price should be or afterwards? A. I think it was afterward.

Q. When he made Mr. Gibberd an offer for this land did he have a check there of someone's to pay for it? A. I don't remember that.

Q. Was he just negotiating with you and your

(Testimony of Addie G. Gibberd.)

husband for the purchase of this land or was he at the same time talking about the purchase of the land of Mr. and Mrs. Youngkin?

A. We were speaking in regard to the four different claims, the four claims, and the price of them.

Q. How long was Mr. Worthman out when he went away at that time?

A. It was only a short time.

Q. Did he tell you where he was going?

A. No.

Q. Did he tell you where he had been when he came back?

A. He did not.

Q. But he was going out to see somebody about buying this land?

A. I don't know whether it was that or not. He took the papers, went out of the office and came back.

Q. Took the deeds?

A. I guess they were the deeds.

Q. Had you signed the deeds in blank before?

A. I don't think so; I think we signed afterwards.

Q. Did he pay you in cash?

A. He didn't pay at all.

Q. Where did you get the money?

A. At a bank.

Q. Which bank was it?

A. It was a bank across from Falk's building. Mr. Worthman's office was in Mr. Falk's building, and we crossed the street over on Eighth Street, and as near as I can remember it was in that stone building on Eight and Idaho.

(Testimony of Addie G. Gibberd.)

Q. What did you do when you got over to that bank to get your money?

A. We presented some papers, a check I suspect.

Q. Did Mr. Worthman give you a check for your property? A. He certainly did.

Q. Do you remember whose check that was, whose name was signed to it? A. No, sir.

Q. And you have no idea whose check that was?

A. I don't remember the name. A name was signed to it but I can't remember the name.

Q. Did you ever meet Mr. Kinkaid with reference to that? A. I never have.

Q. Have you ever met him? A. No, sir.

Mr. GORDON.—We offer in evidence the sworn statement of Mrs. Addie G. Gibberd, dated September 8, 1902, the testimony of Mrs. Gibberd before the land office, and the cross-examination thereto, dated December 23, 1902, the certificate of the register and receiver of the land office, dated December 23, 1902, the deed of Addie G. Gibberd and her husband William H., dated February 12, 1903, to Horace S. Rand, and the patent to Mrs. Addie G. Gibberd to lots 3 and 4, and the south half of the northwest quarter of section 2, township 7 north of range 7 east, Boise Meridian, and I will put in the final proof.

(Papers marked Plaintiff's Exhibit No. 25A to 25M inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Gibberd, there hasn't been a time for the last ten years when your husband couldn't go to the

(Testimony of Addie G. Gibberd.)

bank and get the money to prove up on a timber claim, has there? A. I guess not.

Q. It is alleged in the complaint in this action that you made this timber and stone entry under an arrangement, an agreement, with the Barber Lumber Company, John Kinkaid, Louis M. Pritchard, Patrick Downs, Horace S. Rand and others, by which you agreed to turn it over to them as soon as you got title. Is that allegation true or false?

A. It is false. I don't know a thing about it.

Q. At the time you entered your claim you hadn't any talk with anybody about selling it?

A. No.

Q. And never did until after you got your final receipt? A. No.

Q. And quite a long time after that, wasn't it?

A. I don't know how long afterward.

(Witness excused.)

[Testimony of James O. Baker, on Behalf of the Complainant.]

JAMES O. BAKER, produced as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is James O. Baker, is it?

A. Yes, sir.

Q. Where do you live, Mr. Baker?

A. In Boise City.

Q. And what is your occupation?

A. Teamster.

Q. How long have you been a teamster?

(Testimony of James O. Baker.)

A. About twelve years, about that length of time.

Q. How old are you?

A. I am thirty-six years old.

Q. Were you a teamster in 1901, when you made an entry under the Timber and Stone Act?

A. I was.

Q. For whom were you working then, if you remember?

A. I was working at that time for Tom Stevenson; that is, I was working with him; I was driving my own outfit.

Q. You took up a claim under the Timber and Stone Act? A. I did.

Q. I will ask you if that is your signature to the sworn statement, dated December 24, 1901, James O. Baker. (Showing witness paper.)

A. Yes, sir, it is.

Q. Do you remember who prepared that paper for you? A. I do not.

Q. Have you any idea who prepared it for you?

A. No, sir, I have not.

Q. Have you any idea where you received that paper?

A. I received that paper it seems to me in the land office.

Q. Do you remember who brought it to the land office and gave it to you? A. I do not.

Q. Do you remember whether you went to the land office alone or whether someone went with you?

A. There was two more went with me, Tommy Stevenson went with me, and I don't remember, but

(Testimony of James O. Baker.)

I believe it was Arthur Brookhart was the other one.

Q. Do you know whether either of those men drew that paper for you? A. They didn't.

Q. Do you know whether the register or receiver or some official of the land office drew that paper for you?

A. No, I couldn't say who drewed this paper. Whoever drewed it was a stranger to me, I don't know what his name was.

Q. Do you remember whether you had ever seen the man that drew this paper before?

A. I don't believe that I did.

Q. Do you remember whether or not you paid anyone a few for drawing this paper?

A. I paid some man a fee for drawing it, my location fees.

Q. Was the man you paid the location fee to the man that drew this paper?

A. I couldn't say positively, but I believe he is.

Q. Who is the man you paid your location fee to?

A. I couldn't say positively, but that is the gentleman there (pointing).

Q. John I. Wells?

A. That man right there (pointing to Mr. Wells).

Q. He is the man that drew that paper?

A. He is the man I paid my location fees to, and I believe that is the man that did it.

Q. After you made your location this is the first paper you took to the land office to make your entry. Was Mr. Wells at the land office with you?

A. No, sir.

(Testimony of James O. Baker.)

Q. Had you been in Mr. Wells office or talked with him about this property before this paper was drawn? A. No, sir.

Q. Who first spoke with you about locating on this piece of property? A. Stevenson.

Q. What is his first name? A. Tom.

Q. Did you work with Mr. Stevenson?

A. Yes, sir.

Q. You worked for him, I understand?

A. I had worked for him considerable.

Q. Do you remember what he said with reference to taking up a timber claim?

A. Yes, sir.

Q. What was it?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and calling for hearsay evidence.

A. He said, "Jim, I am going up to take up a timber claim," and he says, "you had better come and go along." He said, "There is no reason why you can't," he said, "It will be worth something to you some day," and I studied over it about a week, and when he got ready to go I went with him.

Q. Did he tell you how much the land would cost you?

A. He told me it would cost me \$400.

Q. Did you have \$400 in the bank at that time?

A. No, I didn't have it in the bank. I had that much money.

Q. Where did you have it?

A. I had some of it in my pocket, and some of it

(Testimony of James O. Baker.)

I had loaned out.

Q. Loaned to whom?

A. Charlie Wilmot.

Q. How much did you have loaned to Mr. Wilmot? A. \$90.

Q. And did you have the rest of the \$400 in your pocket?

A. No, I had \$50 loaned to Bert Corey.

Q. And did you have the rest of the \$400 in your pocket? A. I did.

Q. How much over?

A. I had about \$325 in my pocket.

Q. How long had you had that money in your pocket?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

A. It was just small monthly wages that I had been saving off and on for two years.

Q. What were your wages?

A. I was getting \$40 to \$45 a month and board.

Q. And did you see anybody with reference to this property before you left Boise besides Mr. Stevenson? A. No, sir.

Q. Who were among the party that went with you to look at this land?

A. Mr. Stevenson, Mr. Brookhart and Mr. Stevenson's wife, and a young fellow by the name of Roberts. I don't know his first name.

Q. Who arranged the party?

A. Stevenson.

Q. Got the team?

(Testimony of James O. Baker.)

A. He owned the team.

Q. Did you have to pay anything for the use of the team? A. No, sir, I did not.

Q. And did you know who was going to locate you?

A. Stevenson told me, but I don't remember the name of the man who did locate us.

Q. Did you meet the party up there that was going to locate you? A. Yes, sir.

Q. Would you know the man's name if you heard it?

A. I would not. A name is something I can't remember hardly, never did.

Q. Where did you go, what city or town?

A. I went to Placerville, or Centerville, we met him at Centerville.

Q. You met him at Centerville?

A. Yes, sir.

Q. And did you ask him how much he was going to charge you to locate you? A. I did.

Q. How much? A. \$25.

Q. Did you pay him the \$25?

A. I paid it to Mr. Wells, this gentleman there.

Q. And did you pay it before you went up there or afterwards?

A. No, sir, I paid it afterwards.

Q. Now did this man who located you take you out over a piece of ground? A. He did.

Q. Did he give you a description of it?

A. Yes, sir.

Q. Did he show you more than one piece, or did

(Testimony of James O. Baker.)

he take you to one piece?

A. He showed me more than one piece.

Q. How many pieces did he show you?

A. I walked over two different pieces.

Q. Did he ask you which you liked best?

A. He did.

Q. And you liked the one you got better than the other one? A. Yes, sir.

Q. Did he take the others along with you?

A. I think we was all together, except Stevenson's wife, when she got her piece of ground she went on home, the snow was too deep.

Q. Where did he tell you you would have to pay this locating fee?

A. I paid it to him (pointing).

Q. To who?

A. This gentleman here.

Q. Is he the gentleman that located you?

A. Yes, sir.

Q. You met him up at Centerville?

A. No, I didn't meet him there; I met the survey parties there that he told me I would meet there to show me.

Q. Then you had seen him before you went up there? A. I had seen him in Boise.

Q. Where did you see him in Boise before you went up to look at this land?

A. I seen him at Stevenson's barn on Front Street.

Q. Now, this man that you have spoken of or indicated by saying the man here in the room, that is

(Testimony of James O. Baker.)

the gentleman there (pointing), John I. Wells, that you are referring to? A. Yes, sir.

Q. And he came to Mr. Stevenson's barn, that was before you went up to look at the land?

A. I seen him there.

Q. Was that the time Mr. Stevenson and you had the conversation about buying this land?

A. No, sir, it was a few days before that.

Q. Did you talk to him the first time you saw him there?

A. No, sir, Stevenson was the man that told me where I would pay my location fees.

Q. I understand that, but now I want to find out what happened the day that Mr. Wells came to Mr. Stevenson's barn?

A. I don't know why he was there. The man never spoke to me about it.

Q. That was before you and Mr. Stevenson had your talk about taking up land?

A. Yes, sir.

Q. It was a few days before that. And then where did you learn that you were to pay this man Wells the locating fee?

A. Tom Stevenson informed me that.

Q. When was that?

A. That was after we came back from Idaho City, Placerville.

Q. And this man who located you, he told you he would charge you \$25? Well, did he tell you where you were going to pay that?

A. No, he did not; that is, I don't remember if

(Testimony of James O. Baker.)

he did.

Q. You remember asking him what he was going to charge you for locating you?

A. He said it would cost us \$25 for location.

Q. That was the man that located you?

A. Yes, sir.

Q. When did he tell you you would have to pay that?

A. I don't remember when he did tell me I would have to pay it.

Q. Did you think you had to pay it then or some other time?

A. I thought I had to pay it right away.

Q. You came away without paying it?

A. I didn't pay it immediately, but within a few days.

Q. Did he ask you for it?

A. No, sir, I went and paid it.

Q. There wasn't anything said by this man who located you where you were to pay this money?

A. I was to pay it to him, but there was nothing said about the day I was to pay it to him.

Q. Then, later, Mr. Stevenson told you that you were to pay it to John I. Wells? A. Yes, sir.

Q. Did you take it to Mr. Wells?

A. I did.

Q. Whereabouts? A. To his office.

Q. Was that the time he drew this paper for you at his office, the time you paid this fee?

A. No, sir, that paper was drawn before.

Q. That made the second time you had been to

(Testimony of James O. Baker.)

Mr. Wells' office?

A. I believe I was there twice, but I don't remember on what business.

Q. Did you ever have any other business with him except with relation to this land?

A. No, sir.

Q. Then you went to the land office. Do you remember what you paid at the land office the first time you went there?

A. No, I don't. I think though it was \$7.

Q. They gave you to understand at the land office when you would have to prove up, did they?

A. They told me I could prove up within sixty days.

Q. And you went back and proved up?

A. I went back and proved up.

Q. When you proved up do you remember them giving you a receipt for the money you gave them?

A. Yes, sir, I believe I do.

Q. Had anything been said to you up to this time about selling this property?

A. No, sir.

Q. You had just bought it as an investment?

A. Yes, sir.

Q. Had you ever owned any other property?

A. No, sir.

Q. This was your first venture?

A. That was my first.

Q. And how long after you got this paper did you have a chance to sell your property?

A. It was in 1903 that I had a chance to sell it and I sold in 1904.

(Testimony of James O. Baker.)

Q. What time in 1903 did you have a chance to sell it? A. It was along in July.

Q. 1903?

A. Yes, sir, as near as I remember the date.

Q. Was your claim held up for anything?

A. No, sir.

Q. Then, you held it a year before anybody offered to buy it from you? A. Yes, sir.

Q. What did you do with this paper all the time, keep that?

A. Yes, sir, I kept it at home.

Q. Who spoke to you about buying it in 1903?

A. I don't know the man's name; I simply got a letter from him.

Q. What did you do with that letter?

A. I don't know but that I may have it at home; I did.

Q. We will ask you to favor us with that letter, please, if you have it.

A. I think I can do it; I ain't sure that I can.

Q. Have you any idea of the name of the person that wrote that letter?

A. No, sir; I haven't.

Q. Had you ever heard it before?

Mr. FRASER.—Was it Hyatt?

A. I don't remember the name signed to it.

Mr. FRASER.—Written from Placerville or Centerville? A. I couldn't tell you.

Mr. GORDON.—Then you waited a year, as I understand, and then you had another offer, is that right? A. Yes, sir.

(Testimony of James O. Baker.)

Q. Who did this offer come from?

A. The man I sold to but I don't remember what his name is.

Q. Did he come to see you or did he write you a letter?

A. He came to my house to see me.

Q. What did he have to say to you?

A. He wanted to know what was the least I would take, and that he wanted to buy.

Q. And what did you tell him?

A. I told him \$1,000.

Q. How much did he give you?

A. He give me \$1,000.

Q. Is this the deed that you signed at that time?

A. Yes, sir. That was signed in my own house.

Q. Is that your wife's signature?

A. That is my wife's signature.

Q. How many times did this man to whom you sold the property come to your house to see you about this?

A. He only come the one time.

Q. He was only there the one time?

A. That is all.

Q. Did you ever sign any other deed for this property?

A. No, sir.

Q. Did you ever sign this deed more than the once?

A. No, sir.

Q. And this deed was signed at your house, here in Boise, and that was the only time you had ever seen the man to whom you sold it?

A. Yes, sir.

Q. Did the man come alone?

A. He was.

Q. And did the man that you sold it to swear you to that paper, take your acknowledgment?

(Testimony of James O. Baker.)

A. Yes, sir, he did.

Q. Did he pay the money there?

A. He did.

Q. Had you ever written to him about it before then? A. No, sir.

Q. And he had never written to you?

A. He had never written to me.

Q. Did he have this paper with him when he came there? A. Yes, sir.

Q. And you had never talked to him about selling the property? A. No, sir.

Q. That is the first man you ever talked to about selling it?

A. No, I talked to a man I supposed to a Barber man in 1903.

Q. Who was that? A. I don't know.

Q. Where was it?

A. It was in a law office on Main street. I think it is on the first floor on Main, over the bank there on the corner of Ninth and Main. I think that is where the office was as near as I remember.

Q. When were you married, what year?

A. In 1901.

Q. 1901? A. Yes, sir.

Q. What time in 1901?

A. November I believe it was.

Q. Was it November or was it after Christmas?

A. It was before Christmas, it was in the fall.

Q. Before Christmas, 1901? A. Yes, sir.

Q. And you say the man that came to your house paid you the money and talked to you about this was

(Testimony of James O. Baker.)

there but once? A. He was there but once.

Q. And that is the only time you ever remember seeing him?

A. It was the first time and the only time.

Q. And he brought this paper there with him?

A. Yes, sir.

Q. And did you notice or did you think there was anything strange about the deed being dated July 7th, and then the four having been erased, and the name of James O. Baker, unmarried, in the deed, and then the unmarried scratched out and Florence E., his wife, written over it? Did you notice anything like that?

A. No, sir, I didn't notice anything of that at all.

Q. Did you tell the man that brought this paper there that you were unmarried? A. No, sir.

Q. Where were you married?

A. In Boise City.

Q. Did this gentleman give you a thousand dollars in cash or was it—

A. (Interrupting.) It was cash money.

Q. Did you keep that in your pocket or did you put it in the bank?

A. I kept it in my pocket until I spent it.

Q. A good time?

A. No, it wasn't a good time. It was hard luck and sickness that took that money.

Q. Now, with reference to the money with which you proved up, did these gentlemen that you spoke of return those loans you had made them?

(Testimony of James O. Baker.)

A. Yes, sir, they did.

Q. And how long before you proved up did they pay these loans?

A. I didn't understand the question.

Q. How long before you paid the money into the land office did they return the money you had loaned them?

A. The last return money I got was only a day or two until I went to the land office and paid it.

Q. And which one of them paid you that?

A. Bert Corey.

Q. And did he give you a check for it?

A. He give me the money.

Q. How much was it? A. \$50.

Q. The other gentleman?

A. Charles Wilmot.

Q. How much was his loan?

A. I think it was \$75.

Q. And the other money you had?

A. The other money I had.

Mr. GORDON.—We offer in evidence the sworn statement of James O. Baker, dated December 24, 1901, the testimony of Mr. Baker before the land office on final proof, the cross-examination, dated March 20, 1902, the receipts of the register and receiver of the land office, dated July 22, 1902, the deed of James O. Baker and wife Florence E. to A. E. Palmer, dated July 7, 1904, to the southeast quarter of section 25, township 7 north of range 5 east, Boise Meridian, and the patent to the same land.

(Testimony of James O. Baker.)

(Baker papers marked Plaintiff's Exhibit No. 26A to 26T, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. You paid this \$25 locating fee to Mr. Wells, the man who was in here? A. Yes, sir.

Q. But the man that located you was another man? A. Yes, sir.

Q. And that is the man you asked how much it would cost up there? A. Yes, sir.

Q. The other man, the surveyor, that put you on the land wasn't this man in the courtroom here?

A. No, sir.

Q. You don't know his name?

A. I don't know his name at all.

Q. Mr. Baker, it is charged in the bill of complaint in this lawsuit we are trying here, the Government charges that you and a great many other citizens of Boise entered your timber and stone claims under a contract or agreement, which they say existed between you and the Barber Lumber Company, Mr. Barber, Mr. Moon, Mr. Sweet, Mr. Kinkaid, Mr. Pritchard, and others, whereby you agreed to sell to them and they agreed to purchase of you when you got title. Is that allegation true or false?

A. It is false. I had no agreement with anybody whatever.

Q. With nobody?

A. With nobody whatever.

(Witness excused.)

At this time court adjourned until ten o'clock A. M., Monday, February 8, 1909.

(Testimony of Elof Anderson.)

Court met, pursuant to adjournment, at ten o'clock A. M., Monday, February 8, 1909, the Examiner and counsel for the respective parties being present.

[Testimony of Elof Anderson, on Behalf of the Complainant.]

ELOF ANDERSON, produced as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Elof Anderson?

A. Yes, sir.

Q. And you reside at Boise? A. Yes, sir.

Q. How long have you resided in Boise?

A. It will be fourteen years next April.

Q. What is your business, Mr. Anderson?

A. I am a merchant tailor.

Q. You took up a claim under the Timber and Stone Act in August, 1902, did you? A. Yes, sir.

Q. Will you state the name of the first person who spoke to you about this or with whom you spoke concerning taking up a claim?

A. That is something I can't very well do, because there was so many that was talking about taking up timber claims that I don't remember who it was. It was general talk about taking up timber claims about that time and had been for a year previous and I can't speak about that.

Q. Did you speak to Mr. Kinkaid?

A. Never.

Q. Speak to Mr. Pritchard?

A. No, I never knew Pritchard prior to that.

(Testimony of Elof Anderson.)

Q. Did you have any conversation with Mr. Kinkaid as to whether or not you could take up a claim?

A. I asked Mr. Kinkaid as to whether my wife had a right to take up a timber claim or not. That was the only time.

Q. And that was before you had taken up one too?

A. Yes, sir.

Q. You went up to look over timber claims?

A. Yes, sir.

Q. I have here a timber and stone sworn statement, dated August 29, 1902, and ask you whether that is your signature to it? (Showing witness paper.)

A. Yes, sir.

Q. And you had been up and viewed this land before you made and filed that statement?

A. Yes.

Q. With whom did you, or where did you go to look at this land, what city or town?

A. I went above Idaho City to a little place called Kempner's ranch, somewheres in this direction (pointing).

Q. And who was of the party that went with you?

A. Mr. Gibberd.

Q. What Mr. Gibberd?

A. I don't know that I know his initials. He has got property up here on the bench I know. Mr. Youngkin was one and Mrs. Anderson and myself.

Q. Who located you there?

A. Mr. Downs.

Q. Who presented you to Mr. Downs? Did you know him before you went there?

(Testimony of Elof Anderson.)

A. I never knew him before.

Q. Ever see him before? A. No, sir.

Q. Did Mr. Downs take you out to the land to locate you? A. Yes, sir.

Q. Did he show you one piece and give you a description of it as the piece you were to take?

A. Yes, sir.

Q. Did he show you any others?

A. He only showed us—we went all together; that is, Mr. Youngkin, Mr. Gibberd and I, we went all over; we were all three together in the party, and we went over those claims.

Q. I mean did he ask you if you would rather have this one, or did he just take you over the claim and say this one is for you?

A. No, he didn't show us any selection of claims. The one he showed me seemed to be all right.

Q. And that is the one you took? A. Yes.

Q. And he gave you a description of that?

A. Yes, sir.

Q. And you returned to Boise? A. Yes, sir.

Q. And who did you see when you returned to Boise about having your papers made out?

A. Mr. Worthman.

Q. Did you see Mr. Kinkaid after you returned before you went to see Mr. Worthman?

A. No, I hadn't anything to do with Kinkaid in regard to the timber.

Q. Who told you to go and see Downs? Who told you to go up and see Mr. Downs?

A. Well, the party that I went up with, Mr. Gib-

(Testimony of Elof Anderson.)

berd and I and Youngkin, was going together, and I don't know who told me about Mr. Downs. I understood there was someone up there to locate us.

Q. Did Mr. Kinkaid tell you Mr. Downs would locate you? A. No, he did not.

Q. Where did this party start from to go up to view this land, what place in Boise?

A. The team called at our house for us, that morning.

Q. Where did you go before you started?

A. We went right ahead.

Q. Did you start from Mr. Wells' office?

A. No.

Q. Did I understand you to say when I talked with you in here that you started from Mr. John I. Wells' office?

A. No, excuse me, but I said I went up to Wells' office and arranged for the party, but that was the day before.

Q. And did he arrange the party and the team?

A. I don't know about that; I don't think he did.

Q. What arrangements were made with Mr. Wells? What arrangements did you have to make with Mr. Wells?

A. I had no arrangement at all, but Mr. Gibberd I met there.

Q. At Mr. Wells' office? A. Yes, sir.

Q. That was the day before you started?

A. Yes, sir.

Q. Do you know why you went to Wells' office?

A. I didn't, no, sir.

(Testimony of Elof Anderson.)

Q. You don't know what prompted you to go to Mr. Wells' office?

A. I met Mr. Gibberd on the street, I think, and he said to me—I am not sure of this—but he was the one that got me up to Wells' office that we should meet there and arrange for the time to start.

Q. Had you talked with Mr. Youngkin about this before that?

A. I never knew Mr. Youngkin.

Q. Then, you went to Mr. Worthman and he prepared these papers for you? A. Yes.

Q. Then, you took them to the land office?

A. Yes.

Q. Was your wife with you on these occasions?

A. Not on fixing up the papers.

Q. Did she go to Mr. Wells' office with you?

A. No.

Q. And do you remember the time when it came to prove up, make your final proof at the land office? A. Yes.

Q. Did you prove up alone or did some of this other party prove up at the same time?

A. I think Mr. Gibberd about the same time, and Mrs. Anderson also, my wife.

Q. And how much money did it cost to make your final proof?

A. Well, I don't know exactly, I don't remember; something like \$800, \$400 wasn't it, something like that. I don't exactly remember that.

Q. And where did you get the money with which you made the final proof?

(Testimony of Elof Anderson.)

A. I borrowed the money from the Bank of Commerce.

Q. In this city? A. Yes, sir.

Q. And did you borrow it the same day you made your final proof or several days before?

A. I think about the same day I made final proof, but I had made arrangements for it before.

Q. You gave a note for it? A. Yes, sir.

Q. Do you remember how long that note ran?

A. I don't exactly remember how long it did run.

Q. Have you no recollection of it whatever?

A. No, I have not.

Q. Was it sixty days or a year or—

A. (Interrupting.) Why, I often borrow money and it usually reads pay at any time, sixty or ninety days, I can't just exactly remember how the notes read, but I am subject to borrowing money all the time, for that matter.

Q. Do you remember when you paid that note?

A. Yes, I paid it I think after I sold the claims.

Q. How long after? The same day?

A. Oh, I couldn't tell that.

Q. I show you testimony of claimant, dated December 8, 1902, and ask you if you signed that?

A. Yes, that is my signature.

Q. And I show you the deed, dated February 11, 1903, running from you and your wife to Horace S. Rand, and ask you if you signed that?

A. Yes, sir.

Q. And acknowledged it? A. Yes, sir.

(Testimony of Elof Anderson.)

Q. Before Mr. Pritchard? A. Yes.

Q. Mr. Anderson, do you remember where you made this deed that you have identified, in whose office?

A. Mr. Worthman's office.

Q. Did Mr. Worthman have the deed there when you went to see him, or did he go out and get it?

A. No, I guess he had it there.

Q. Had you talked with Mr. Worthman about selling this property before the day you signed this deed, or was the transaction all closed on the same day?

A. I had not spoken to Mr. Worthman about the sale of the property.

Q. Who had you spoken to about it?

A. I spoke to Mr. Kinkaid about it.

Q. And how long before this deed was signed had you spoken to Mr. Kinkaid about it?

A. It was not very long. I don't exactly remember, but it was not very long.

Q. What arrangement did you have with Mr. Kinkaid as to what should be paid for it?

A. I had no arrangement with him only that he was to pay me what he paid for other claims.

Q. What other claims did you have reference to?

A. Other claims that was sold at that time. I understood that there was a certain price on the claims.

Q. And did you see Mr. Kinkaid about this at his office or did he come to your office?

A. I think I went to his office.

Q. You had never talked to Mr. Worthman about selling this, as I understand, up to this time?

(Testimony of Elof Anderson.)

A. No, sir.

Q. Who directed you to go to Mr. Worthman's office to sign the deed? A. Mr. Kinkaid.

Q. And he arranged the time for you to go?

A. Yes, I think so.

Q. And you and your wife went together?

A. Yes.

Q. Both signed this deed at that time?

A. Yes.

Q. Was the deed in blank or was the deed made out to Horace S. Rand at that time?

A. The deed was made out, but I could not tell who it was to, Rand, or who it was.

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Who did you think you were selling this property to? A. Well, I had no idea at all.

Q. Who paid you for this property?

A. Mr. Kinkaid.

Q. Did he pay you before you signed the deed or did you go back after signing the deed in Mr. Worthman's office?

A. Mr. Kinkaid gave me the check after we had signed the papers.

Q. Then you went back to Kinkaid's office?

A. Yes, sir.

Q. On the same day? A. Yes, sir.

Q. Mr. Worthman didn't go out and get the money and bring it to you? A. No, sir.

Q. Who else signed a deed in Mr. Worthman's office at the time you were there?

(Testimony of Elof Anderson.)

A. My wife.

Q. Was Mr. Gibberd or any of the other gentlemen there at that time? A. No, sir.

Q. Mr. Youngkin?

A. No, we signed the deed in Mr. Kinkaid's office, I am pretty sure.

Q. What did you go to Worthman's office for? I asked you whether Mr. Worthman drew this deed or whether he had it at his office and you said you thought he had it there.

A. I don't remember about these things, but I went to Mr. Kinkaid's office for the money.

Q. Was that after you signed the deed?

A. Yes, sir.

Q. Did you take the deed along or did Worthman retain the deed?

A. No, I took the deed with me.

Q. Where was Mr. Pritchard before whom you acknowledged this deed? Was he at Mr. Worthman's office?

A. I believe I went to his office.

Q. Did you go there with your wife?

A. Yes.

Q. Who went with you besides, anyone?

A. No, those things—I cannot exactly remember how those details were performed. I could not tell those things.

Q. All I am asking for is your best recollection, Mr. Anderson? A. Yes.

Q. How much was paid you for these two pieces of property?

(Testimony of Elof Anderson.)

A. The nearest I could recollect was that we made about \$300 apiece, after paying expenses.

Q. Now, do you remember how you were paid, in check or in cash, that day? A. In check.

Q. Do you know whose check it was?

A. Mr. Kinkaid's, as far as I recollect.

Q. Do you know how much that check was for?

A. It was for both my wife's claim and my own claim.

Q. How much was the check for?

A. It must have been something like \$1500 or \$1600, something like that.

Q. And you deposited that check at the bank?

A. Yes, sir.

Q. In the Bank of Commerce?

A. Bank of Commerce, yes.

Q. Did you ever made but the one deed to this property, or did they ask you to make another deed?

A. Just one deed. I never saw more than one deed. I am pretty sure it was only one deed I signed.

Q. You haven't any recollection of having made one deed and then later being called back and making another deed?

A. No, sir; never did that, no.

Mr. GORDON.—We offer in evidence the sworn statement of Elof Anderson, dated August 29, 1902, the testimony of claimant, Mr. Anderson, dated December 8, 1902, and cross-examination, the proof papers of Mr. Anderson, the certificate of the register and receiver of the land office, dated December 8, 1902, and the deed of Elof Anderson and his wife

(Testimony of Elof Anderson.)

Emma M. to Horace S. Rand, dated February 11, 1903, and the patent, all to the southeast quarter of section 12, township 7 north of range 7 east, Boise Meridian. This deed also contains the description of his wife's property, which I will read when she goes on the stand, following Mr. Anderson.

(Marked Plaintiff's Exhibit No. 27A to 27 O, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Anderson, in your original statement that you filed in the land office under date of August 29, 1902, which I show you, sworn to before James King, Register, you said, among other things, this: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement was absolutely true, was it not? A. Yes.

Q. And at the time you made your final proof and received final receipt you made a similar statement and that statement was true at that time, was it not?

A. Sure.

Q. Did you ever at any time prior to the issuance of your final receipt make any arrangement or agreement of any kind or character by which you agreed to sell or anyone agreed to buy that land?

A. No, sir.

Q. In this bill of complaint in this action we are

(Testimony of Elof Anderson.)

trying here, it is alleged that you and a great many other entrymen entered into a conspiracy with the Barber Lumber Company, and Mr. Kinkaid, Mr. Moon, Mr. Barber, Mr. Wells, and others, entered into an agreement with them by which you made an agreement that this property was to be turned over to these parties as soon as you got title, and I want to ask you whether that allegation is true or false?

A. It is false as far as I am concerned.

(Witness excused.)

[Testimony of Emma M. Anderson, on Behalf of the Complainant.]

EMMA M. ANDERSON, produced as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Emma M. Anderson?

A. Yes, sir.

Q. Did you take up a claim under the Timber and Stone Act in 1902?

A. Yes, sir.

Q. I show you timber and stone sworn statement, dated August 29, 1902, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. Do you remember, Mrs. Anderson, the first one that suggested to you taking up a claim?

A. Mr. Anderson.

Q. And what did he say to you about it?

A. Why, he was going alone, and then he came home and said, "Why, you can go also, so get your things on and let's go."

(Testimony of Emma M. Anderson.)

Q. Did he tell you that you could sell the claim at that time? A. No.

Q. And you went up and viewed the claim?

A. Yes, sir.

Q. Do you remember who located you on the claim? A. Yes, sir.

Q. Who was it? A. Mr. Downs.

Q. Mr. Patrick Downs? A. Yes, sir.

Q. And do you remember when you came back?

A. Yes, sir.

Q. When Mr. Downs located you on this claim did he take you out and show you a claim and then give you a description of it?

A. Yes, sir; I went along with Mr. Anderson at the time; we both saw it.

Q. Did they give you a description of this property or did you get the description of it after you got back? A. Well, I don't know, sir.

Q. Did you go to have these papers prepared or did Mr. Anderson tend to that for you?

A. Mr. Anderson tended to that for me.

Q. You didn't go along? A. No, sir.

Q. You went to the land office and filed this paper I have shown you? A. Yes, sir.

Q. And then you went to the land office subsequent to that and made your final proof? Paid in some money and made final proof?

A. Yes, sir.

Q. Where did you get the money with which you made your final proof? A. Mr. Anderson.

Q. Did you get it that day, the day you made your

(Testimony of Emma M. Anderson.)

proof or when? A. I don't know that.

Q. Did Mr. Anderson go to the land office?

A. He did all the arranging for the money.

Q. Did Mr. Anderson go to the land office with you when you made your proof? A. Yes, sir.

Q. And the money was paid at that time?

A. Yes, sir.

Q. Did he tell you of the negotiations with reference to selling the property? A. Yes, sir.

Q. Where did you go to sign this deed, if you remember? I will ask you if you didn't sign this deed, dated February 11, 1903 (showing witness deed)?

A. Yes, sir.

Q. Do you remember where you signed that?

A. In Mr. Kinkaid's office, I think. I went with Mr. Anderson, I don't remember just where, but I think it was Mr. Kinkaid's office.

Q. Do you remember Mr. Pritchard, the gentleman who swore you to that, took your acknowledgment? A. No, sir; I don't remember that.

Q. Do you remember whether you went to his office?

A. No, sir; I don't; I don't think we did.

Q. Did you go to Mr. Worthman's office in this transaction? A. No, sir.

Q. You didn't go to Mr. Worthman's office?

A. No, sir.

Q. Do you remember whether this deed was at Mr. Kinkaid's office when you went there?

A. No, sir; I just remember signing my name to the papers; that is all I remember.

(Testimony of Emma M. Anderson.)

Q. Do you remember how long you were in Mr. Kinkaid's office? A. Just a few minutes.

Q. And did you get your money there?

A. No, sir; Mr. Anderson had the money.

Q. Did he get it at that time?

A. I don't know.

Q. Did you ever sign any other deed with reference to this property but this one? A. No, sir.

Q. Were you ever asked to sign another deed?

A. No, sir.

Q. Did you ever sign any paper with reference to this property except the papers you signed at the land office and this one deed? A. No, sir.

Q. When you saw Mr. Downs, do you remember whether you or your husband paid him a fee for locating you?

A. No, sir; I don't remember that.

Q. Did you ever meet Mr. John I. Wells?

A. No, sir.

Q. Don't know him?

A. No, sir; I don't know him.

Q. Now, I understood you to say that your husband brought you the money with which you paid your final proof? A. Yes, sir.

Mr. GORDON.—We now offer in evidence the sworn statement of Emma M. Anderson, dated August 29, 1902. I forgot to ask her if she signed the testimony of claimant, dated December 8, 1902.

The WITNESS.—Yes, sir.

Q. That is your signature? A. Yes, sir.

Mr. GORDON.—(Continuing.) The cross-exam-

(Testimony of Emma M. Anderson.)

ination thereto, and the proof papers, dated December 8, 1902, and the patent, the certificates of the receiver and register of the land office, dated December 8, 1902, the deed, dated February 11, 1903, and the description, lots 1, 2, 3 and 4, section 1, township 7 north of range 7 east, Boise Meridian. We offer the patent in both cases. This deed I read in connection with her husband's.

(Papers marked Plaintiff's Exhibit No. 28A to 28 O, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Anderson, at the time you first went to the land office and made your original filing, and signed this paper I show you, dated August 29, 1902, you were sworn that time before James King, register?

A. Yes, sir.

Q. And in that statement you said, among other things, this: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." At the time you swore to that statement it was absolutely true, was it not?

A. Yes, sir.

Q. And at the time you went to the land office and paid your money and got your final receipt that statement was absolutely true?

A. Yes, sir.

Q. Did you ever, at any time, prior to the time you sold out to Mr. Kinkaid have any agreement by

(Testimony of Emma M. Anderson.)

which the title should inure to the benefit of any person except yourself? A. No, sir.

Q. It is alleged in the complaint that you, with a great many other entrymen, entered into an agreement or conspiracy with the Barber Lumber Company, Mr. Barber, Mr. Moon, Mr. Sweet, Mr. Kinkaid, Mr. Pritchard, Mr. Downs, Mr. Palmer, Mr. Rand, and other persons, by which agreement it was understood and agreed that any title which you might get from the Government by virtue of your timber and stone entry should be by you conveyed to the gentlemen I have named, or to such person as they should direct. Is that allegation true or false so far as it affects you? A. True.

Q. This bill of complaint alleges that you entered into an agreement with the gentlemen whose names I have read by which you agreed that any title you should get from the Government should be turned over to them. Did you ever enter into such an agreement? A. No, sir.

Q. Is that allegation of agreement in this bill of complaint so far as it affects you true or false?

A. False.

Q. Did you understand that Mr. Downs and Mr. Wells were gentlemen engaged in the business of locating people for hire? A. No, sir.

Q. Do you know whether you paid anything for having Mr. Downs locate you?

A. No, sir; I didn't.

Q. Your husband attended to all that?

A. Yes, sir.

(Testimony of Emma M. Anderson.)

Q. The only thing you know about this particularly is that you entered this land for your own benefit?

A. Yes, sir.

Q. And you sold it for your own benefit?

A. Yes, sir.

Q. And you never had any agreement with the Barber Lumber Company or anybody else by which you were to turn over the title you got to them?

A. No, sir.

(Witness excused.)

[Testimony of John J. Keane, on Behalf of the Complainant.]

JOHN J. KEANE, produced as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John J. Keane?

A. Yes, sir.

Q. Where do you reside, Mr. Keane?

A. Boise City.

Q. How long have you resided here?

A. Well, I have been here about fifteen or twenty years, I guess.

Q. What is your occupation?

A. Commission now.

Q. What was your occupation in October, 1901?

A. I was tending bar for Mr. Lemp.

Q. You made a timber and stone entry in October, 1901?

A. Yes, sir; I think I did about that time.

Q. I show you timber and stone sworn statement, dated October 26, 1901, and ask you if you

(Testimony of John J. Keane.)

signed that? A. Yes, sir; I did.

Q. I will show you the testimony of John J. Keane taken before the land office, dated January 16, 1902, and ask you if you signed that?

A. I signed that, yes, sir.

Q. That is your signature to it?

A. Yes, sir; that is my signature.

Mr. BUNDY.—Will you read the description of the land?

Mr. GORDON.—The west half of the northeast quarter and the west half of the southeast quarter of section 21, township 7 north of range 5 east.

Mr. BUNDY.—We object to the introduction of any evidence relating to the timber and stone entry of John J. Keane, and involving the west half of the northeast quarter and the west half of the southeast quarter of section 21, township 7 north of range 5 east, for the reason that the lands therein described are not involved in this action, not set forth in the bill of complaint, and therefore that the evidence is incompetent, irrelevant and immaterial.

Q. Who was the first person that spoke to you about taking up a timber and stone claim, Mr. Keane?

A. I don't remember. There was quite a number, all the boys around where I was working, and they got to talking about it. Nobody particularly that I remember. Dean West was there and Mr. Dye, and I don't know who else.

Q. You said Dean West? A. Yes, sir.

(Testimony of John J. Keane.)

Q. And what was said about taking up these claims?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and asking the witness to testify to hearsay evidence.

A. Well, there was—they got to talking about—I don't know exactly what was said particularly about it, but they was talking about, there was some timber up there to be taken up, and they had a party made up all but one, something similar to that, and I joined the party and went up there and located on a claim.

Q. Who asked you to join the party?

A. I don't know particularly who it was, whether it was Mr. West or Dye or who it was.

Q. Did you have the money with which to purchase that property at that time?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

A. No, I didn't have it all, I don't suppose. I had some.

Q. Did you at that time know where you were going to get the money with which to pay for that property, or have an understanding with these people as to where you were going to get it?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. No, sir.

Q. Who were of the party that went with you when you went to view this land?

A. There was Dean West and Mr. Dye, two Mr. Dyes, Mr. Dye and his son, I think.

(Testimony of John J. Keane.)

Q. Oral Dye? A. Yes, sir, Oral Dye.

Q. Was the father's name Samuel Dye?

A. Yes, sir, I believe that is it.

Q. Do you know where Mr. Samuel Dye is now?

A. He is dead, I believe.

Q. And where did you go?

A. Why, we had a team and we went to Center-ville.

Q. Where did you arrange to start from in Boise, where did you all meet the morning you started?

A. I couldn't say.

Q. Haven't you any recollection of that?

A. No, I haven't. I don't remember, now; somewhere around Main street, I expect, but I don't remember the place.

Q. Who arranged for the team?

A. That, I don't know.

Q. You didn't?

A. I didn't, not particularly myself, but I paid my share of the expenses.

Q. And who located you on this property?

A. I think it was a gentleman by the name of Snow or Downs, I don't know which now, but I think it was Snow.

Q. Did you see Mr. Downs up there?

A. I believe I did see him up there.

Q. How long had you known Mr. Downs?

A. I never knowed him before, I never seen him to my knowledge.

Q. Did you know John I. Wells before then?

A. Well, very slightly.

(Testimony of John J. Keane.)

Q. To whom did you pay a locating fee, if you paid one?

A. Well, sir, I couldn't tell whether I paid it to Wells or Downs. I paid \$25. I don't know really which of them I gave it to.

Q. You mean you paid it to John I. Wells or Pat Downs, you can't remember at this time which?

A. I can't remember at this time which; I think it was either one of them.

Q. Had you seen Mr. Wells up to this time about going up there? A. No.

Q. I mean up to the time this happened?

A. At the time we paid the fee you say?

Q. At the time you paid your locating fee?

A. Yes, I believe I did see him; I think he was in the saloon about that time with the rest of the fellows.

Q. Do you know whether he came there to get your location fee or not? A. I don't know.

Q. Did you pay him at the saloon?

A. Yes, I believe I paid that in the saloon, but I couldn't tell who it was I paid it to.

Q. It was either Wells or Downs, to your best recollection?

A. To my best recollection, yes, sir.

Q. In locating you did Mr. Downs take you out over the property and show you a piece that was to be the piece you would locate on? I mean Snow, whichever one it was that located you?

A. I think it was Snow. We all in a body went over each claim, and he described the claim, going

(Testimony of John J. Keane.)

to the corners as near as I recollect now, and my claim I remember was about the last claim on that side of the creek, so I didn't go any further; they went over across the creek, southwest I should say from where I was, and they located some man over there and I didn't go any further.

Q. I mean did he take you to a claim and say, "this is the one for Mr. Keane," and say "this is the one for the others," and describe it to you?

A. He described the claim, yes, sir.

Q. And did he give you a description of it there or did you get the description after you came back?

A. There was a description given and numbers, but I don't remember now how it come.

Q. When you came back you had to get your papers prepared, did you, to file in the land office?

A. Yes, sir.

Q. Do you remember who prepared this sworn statement, the first paper you filed in the land office?

A. I don't remember; I think it was made out in the saloon and I looked it over and signed it.

Q. Do you remember looking at this sworn statement? Who brought that to you at the saloon?

A. No, I couldn't. There was quite a bunch of the boys there, and I don't remember who brought it to me.

Q. Do you remember who brought the description to put in there?

A. I don't remember that now.

Q. That was brought to you at the saloon after you returned?

(Testimony of John J. Keane.)

A. Yes, they were made out in the saloon after we returned; I think it was next day, and we went over and filed our claims.

Q. Was that the day you paid your \$25, as you remember? A. Yes, I think that was the day.

Q. And whoever the person was that made this paper out, do you remember whether or not that was the person you paid the locating fee to?

A. I don't know. I couldn't tell exactly who I gave the money to. I give it to somebody though.

Q. Did anyone tell you how much you could make out of this claim by entering and selling it?

A. No, sir.

Q. Did you have some understanding about what you could make out of the claim in this talk with these gentlemen?

A. No, I didn't have no understanding at all.

Q. Nobody told you whether you could make \$500 or \$1,000? A. No.

Q. Never heard it talked about in the saloon?

A. No, there wasn't very much talk about it, only just went up there and filed.

Q. You hadn't any idea what you could make out of it? A. No, I didn't.

Q. Now, who went to the land office with you when you filed this paper?

A. We all went up, all of us that was interested.

Q. You all went together? A. Yes, sir.

Q. That was Mr. Oral Dye and Mr. Dean West, and Mr. Samuel Dye? A. Yes, sir.

Q. And where did you meet? You say this was

(Testimony of John J. Keane.)

the morning after you returned. Where did you meet to go and file these papers?

A. We met at Mr. Lemp's saloon, there where I was working.

Q. Did you meet by appointment or did they just happen to drop in?

A. I suppose they came in there. I don't know whether it was an appointment or how it was, but they all got there, and if I remember right the papers was made out in the back part of the saloon there and we went over and filed our claims.

Q. At this time were you a married man?

A. Yes, sir.

Q. Did you have a family? A. Yes, sir.

Q. Any children? A. Yes, sir.

Q. How many? A. I had three living.

Q. At that time? A. At that time.

Q. And what were your wages at the saloon?

Mr. BUNDY.—I object to this as incompetent, irrelevant and immaterial, and as cross-examination of their own witness.

A. I think it was \$50 a month and board. I wouldn't be sure.

Q. Now, when you came to pay for this land at the land office where did you get the money with which you paid that?

Mr. BUNDY.—Same objection.

A. I think I got \$400 of it from John Wells.

Q. John I. Wells? A. Yes, sir.

Q. And where did you receive that money from Mr. Wells? A. On Idaho street.

(Testimony of John J. Keane.)

Q. How long was this before you paid that money into the land office?

A. I don't know; I don't remember.

Q. Was it the same day?

A. It might have been the same day; I don't remember now.

Q. And were you told by Mr. Wells when you went to the land office where to say you received this money from?

Mr. BUNDY.—That is objected to as irrelevant, incompetent and immaterial.

A. No.

Q. Did Mr. Wells tell you to say it was your own money?

A. No, he didn't tell me.

Q. Did you give Mr. Wells a note for this money?

A. No, sir.

Q. Did you pay him any interest?

A. No, sir.

Q. When had you talked with Mr. Wells about getting this money? Did you just meet him there that day and tell him you wanted it?

A. I might have talked to him a few days before that; I don't remember.

Q. What did he tell you about it?

A. He said he thought he would be able to give it to me.

Q. Then you went to the land office and paid this money in. They gave you a receipt for it, did they?

A. Yes, sir.

Q. And what did you do with that receipt?

A. I kept it until I got my other receipt, and I

(Testimony of John J. Keane.)

don't know really what I did do with it after that, whether I give it to the party that bought the ground or what I did do with it.

Q. You have sold this property, have you?

A. Yes, sir.

Q. To whom did you sell it?

A. I don't know. I didn't know who they were.

Q. Who did you negotiate with to sell it?

A. I believe I negotiated with—I didn't know him at the time, I didn't know at that time that his name was, I think, Pritchard, a sandy-complected fellow. I don't remember exactly whether it was Pritchard or who it was that come to me about it.

Q. Came to you about it? A. Yes, sir.

Q. And did you sign the deed in Mr. Pritchard's office, or where?

A. I signed the deed in an office at the Sonna Building; I don't know whether it was Pritchard's office.

Q. Who told you to go to that office?

A. I don't know exactly who, whether it was this man Pritchard or who it was now; I don't remember.

Q. And was Wells at the office when you got there? A. Yes, sir, he was there.

Q. Had you made any arrangements with him to go there? A. No, I don't believe I had.

Q. Do you know whether he had arranged for you to go there? A. No, I don't.

Q. And you signed the deed? A. Yes, sir.

Q. How much money was given you?

(Testimony of John J. Keane.)

A. I don't remember exactly how much money I did receive, but it was I thought something in the neighborhood of \$300.

Q. Did you get as much as you expected to get?

A. I got what I thought I agreed to sell it for at the time; I don't remember now; it was satisfactory to me.

Q. Did Mr. Pritchard offer you any amount of money for this property or did he just tell you to come up there and sell it?

A. Yes, he made a price; I don't remember now what the price was.

Q. Was \$250 given to you or more?

A. It was more.

Q. How much more?

A. I couldn't tell you how much more. I know it was more because I only got \$400 from Mr. Wells, and I don't know how much more it was, but it was some more.

Q. Was your wife with you when you signed this deed? A. Yes, sir, she was.

Q. I don't know whether you identified your signature to this deed or not, the deed dated July 19, 1903 (showing witness deed).

A. That is my signature, yes, sir.

Q. And that is your wife's signature?

A. Yes, sir.

Q. And you swore to the acknowledgment on that deed? A. Yes.

Mr. BUNDY.—What did you say that for? The man that signs the deed doesn't swear to it.

(Testimony of John J. Keane.)

Mr. GORDON.—He swears to the acknowledgment.

Mr. BUNDY.—That is the notary's acknowledgment.

Mr. GORDON.—The notary swears him.

Q. Did you wife take up a timber claim?

A. No, sir.

Mr. GORDON.—We offer in evidence the sworn statement of John J. Keane, dated October 26, 1901, his testimony before the land office, dated January 16, 1902, the cross-examination to that examination, the register's and receiver's receipts, dated April 25, 1902, and the deed of John J. Keane and Maggie Keane to A. E. Palmer, dated June 19, 1903, and the patent, all to the west half of the northeast quarter and the west half of the southeast quarter of section 21, township 7 north of range 5 east, Boise Meridian.

(Keane papers marked Plaintiff's Exhibit No. 29A to 29K inclusive.)

Mr. BUNDY.—Have you got the patent?

Mr. GORDON.—I offered it, but I haven't it here.

Mr. BUNDY.—Do you know whether there is one?

Mr. GORDON.—No.

Mr. BUNDY.—As a matter of fact, there hasn't been any patent issued in this claim and there isn't one.

Mr. GORDON.—We are just offering these patents on general principles; the others haven't come, the copies.

Mr. GORDON.—We also offer the proof papers.

Mr. KEIGWIN.—Q. Mr. Keane, at the time you

(Testimony of John J. Keane.)

made this original application did you have any money in the bank?

A. I don't remember.

Q. Did you have as much as \$400 in the bank at that time?

A. I don't remember whether I had any money in the bank or not.

Q. You knew that in the course of two or three months you would have to raise \$400 to pay for the land, did you not?

A. Yes, sir.

Q. What arrangements did you make to get that money?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

A. I heard somebody say that Mr. Wells had money and he said he would help me out.

Q. You were told that Mr. Wells had money which could be borrowed for that purpose?

A. I had heard so.

Q. At the time you made this application at the land office, the first time you went to the land office, you had no arrangements for paying for the land at all?

A. No.

Q. But you were expecting between that time and the time for final proof to raise \$400?

A. Yes, sir.

Q. And then the time came for you to make your final proof, and you went around to Mr. Wells and got the money from Mr. Wells?

A. Yes, sir.

Q. And at that time Mr. Wells cautioned you that

(Testimony of John J. Keane.)

you must say at the land office that the money was your money, didn't he?

A. No, he didn't caution me.

Q. He didn't say that? A. No.

Q. Who did? A. Nobody.

Q. You were never told by anybody that you must say at the land office that it was your money?

A. No.

Q. Didn't Mr. Wells, Mr. Downs, Mr. Kinkaid, suggest to you that you would better say on your final proof that you had had this money by you for some time? A. They didn't say.

Q. Did anyone tell you that you would better say at the land office that you had had the money in the bank and checked it out? A. No, sir.

Q. Mr. Keane, do you remember being examined in the district attorney's office in the month of March, 1907, in regard to this transaction?

A. There was something going on at that time. I don't know what it was.

Q. Who asked you the questions on that occasion?

A. I don't remember.

Mr. BUNDY.—I object to this cross-examination of their own witness.

Mr. KEIGWIN.—Counsel for the complainant state on the record that they have been surprised by the testimony of this witness, and desire to refresh his recollection by reference to his statements made on former occasions.

Q. You came to the district attorney's office in the month of March, 1907? A. I think so.

(Testimony of John J. Keane.)

Q. About what time?

A. About that time.

Q. Do you remember who you saw at that time?

A. There was three or four of them there at that time; Mr. Ruick was there.

Q. Anybody else?

A. Yes, three or four.

Q. Mr. Johnson?

A. I don't know any of them only Mr. Ruick.

Q. Do you remember that someone there connected with the district attorney's office asked you a number of questions in regard to this matter?

A. Yes, sir.

Q. And they took you over the ground pretty thoroughly, much as Mr. Gordon has taken you over this morning?

A. Something like that, yes, I suppose.

Q. Do you remember there was a stenographer there taking down your testimony?

A. I don't remember there was one there; I suppose—I suppose there was one there.

Q. You observed there was somebody there making notes of what you said, did you not?

A. Yes.

Q. Do you remember that some questions were asked you on the morning of that day, and then you were excused until two o'clock in the afternoon; you went home from the examination and came back in the afternoon?

A. No, I never was excused from the time I went there until I finished up whatever it was.

(Testimony of John J. Keane.)

Q. You know there was a recess taken for dinner about noon?

A. I didn't come back after that; I don't remember going back after that.

Q. Well, whether you came back in the afternoon or not, do you remember that the question was put to you as to where you got this \$400?

A. Yes, I expect it was.

Q. And do you remember what answer you made there at that time?

A. I don't remember, no.

Q. You don't remember?

A. I suppose I told them I got the money from Mr. Wells. That is the only answer I know of.

Q. Do you remember that at that time you were asked whether or not Mr. Wells has said to you that you must say at the land office that it was your own money, and that you had had it by you for some time?

A. It might have been.

Q. And do you remember you stated that that was said to you?

A. No, I don't.

Q. And you are quite sure now that you did not, on that occasion state that somebody had recommended to you to say that it was your money and you had had it for some time?

A. No, sir, I don't believe I said it.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Keane, I think you testified that your first information or thought about taking up a timber and stone claim was the result of the talk of the

(Testimony of John J. Keane.)

various people in the saloon? A. Yes, sir.

Q. And among those you mentioned Dean West and Nelson, I think.

A. Dean West and Dye, Samuel Dye.

Q. But they were not the only ones that talked in the saloon about taking up timber and stone claims at that time?

A. No, sir, there was a whole lot of them; it was no secret at all.

Q. The timber up here in the Basin had been opened up to entry about that time?

A. Yes, sir, that was the understanding.

Q. And any American citizen had a right to exercise his privilege and make an entry if he had made no entry before? A. That was the talk.

Q. And so far as making anything out of it, the talk was that there would be buyers here and the timber would have a value?

A. Yes, sir, that was the talk.

Q. That it would cost you \$400 and if you kept it long enough there would be someone here to pay you more than that?

A. Something like that.

Q. At the time you made up your mind to go out with this load, had you ever had a talk with Pat Downs or Kinkaid, or John I. Wells, or any of the parties that have been mentioned here?

A. No, sir.

Q. Then you made up this party and hired a team, as I understand, and went up to Centerville?

A. Yes, sir.

(Testimony of John J. Keane.)

Q. Who paid the expenses of the livery team?

A. We all paid our share.

Q. Who paid the hotel bill up there?

A. We all paid our share equally all the way through.

Q. When did you first learn that you had to pay a locating fee for showing you the corners, etc.? Who told you that, if you remember?

A. I don't remember that.

Q. That was also common knowledge, wasn't it?

A. That was understood, of course, that it would cost \$25 to locate.

Q. When you got up there you say, I think, that Mr. Snow pointed out the land to you?

A. I think so.

Q. And you didn't pay the \$25 up there?

A. No, sir.

Q. But Mr. Snow gave you each a description of the land which you could enter if you wanted to?

A. Yes, I think that was it.

Q. Mr. Gordon asked you if they pointed out a particular piece of land and told you that was yours. What you mean was that they pointed out a particular piece that wasn't taken, and told you that was yours if you wanted to take it?

A. No, they just pointed out and give us the numbers of the sections, etc.

Q. And on your return from this trip you say someone came into your saloon and the papers of the whole party was made out in the back end of the saloon, you don't remember who?

(Testimony of John J. Keane.)

A. I think that was the way they was made out.

Q. At that time you had had a talk with John I. Wells?

A. No, I didn't know the gentleman at that time.

Q. Did you know that Mr. Wells and Mr. Downs were engaged in the business of locating?

A. No, I didn't know that.

Q. You say at the time you made this application you had not made any arrangement for the money? By that I understand you hadn't had any talk with Mr. Wells up to the time you made your application?

A. About the time.

Q. About the time you made your first filing after you came back from Centerville, had you had any talk with Mr. Wells at that time about money, at the time you went to the land office the first time?

A. I don't remember whether I had or not; I don't think I had.

Q. I am speaking, Mr. Keane, of the time you made your first filing in the land office, filed the first papers, when you and all you gentlemen went up from the saloon and made your first filing, at that time you hadn't had any talk with Mr. Wells about getting money?

A. No, it was after that, about the time I was going to prove up.

Q. Now, in this original statement you filed, signed by you, and dated October 26, 1901, you said among other things: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomso-

(Testimony of John J. Keane.)

ever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement was absolutely true, wasn't it?

A. That was right.

Q. You had made no agreement, in writing or orally, with any person for the sale of that land, or any interest in the land, or any interest in the timber, at that time?

A. No, sir.

Q. And at that time no person other than yourself had any interest whatever in the entry you were then making?

A. No, sir.

Q. It is alleged and stated in the bill of complaint in this lawsuit we are trying here, Mr. Keane, that you entered into a conspiracy or agreement with the Barber Lumber Company, Mr. Barber, Mr. Moon, Mr. Kinkaid, Mr. Wells, and several other gentlemen named, and that that agreement was to the effect that you would go up and enter this land and as soon as you got title you would turn it over to them, or to some person they would direct. Is that allegation true or false as far as you are concerned?

A. It is not true. .

Q. Now, after you had made this first filing, filed this first paper I have asked you about, did you have any talk with Wells before you made your final proof?

A. Nothing more than about the money I guess. Before I made my final proof that is all the talk I remember ever having with him.

Q. How long before you made your final proof

(Testimony of John J. Keane.)

was that?

A. I couldn't say. It was pretty close to the time I made the proof.

Q. At the time you had this talk with him about the money did he ask you to sell the land?

A. No.

Q. Did you offer to sell it to him? A. No.

Q. Was there anything said by you or him, or either one?

A. There was nothing particularly said, only he just paid me the money.

Q. Had you had any talk with Mr. Wells before that time about borrowing money to prove up with?

A. I had a talk pretty close to the time I proved up.

Q. But before that had you had any talk with him? A. No, not that I know of.

Q. How did you know you could borrow this money from Mr. Wells? How did you know that, if you remember?

A. Some of the boys said he had money.

Q. You got that information then from somebody besides Mr. Wells in the first place?

A. Yes, sir.

Q. State what took place. Did you ask him to borrow the necessary money to prove up with?

A. I told him I would have to have some money to prove up on.

Q. How did you suppose that money was given to you? Was it a loan or otherwise?

A. I naturally supposed it was a loan.

(Testimony of John J. Keane.)

Q. There wasn't any arrangement that you were to deed the land to him at that time, was there?

A. No.

Q. But you was to pay him back out of the land when you sold it?

A. Yes.

Q. Now, you testified that after you had made your final proof and paid in your money, first you got a receipt which you kept?

A. Yes, sir.

Q. After a few months you got notice from the land office that your final proof had been allowed and final receipt was there?

A. Yes, sent to me by mail, that is my recollection.

Q. Then, when you got your final receipt, as you understood it, you had a right to sell your land, did you not?

A. I supposed so.

Q. Did you understand that you had really nothing to sell until you got your final receipt?

A. Yes, sir.

Q. After you got your final receipt, did you then desire to sell your land? Was that your intention, to sell it?

A. I didn't give it much thought; it was quite a little while afterwards, but I was anxious to sell.

Q. Was it generally known on the street here that Mr. Pritchard was at that time buying timber claims? Did you hear from others that he was buying claims?

A. No, I didn't. I didn't know the man.

Q. How did you know?

A. He come to me. I guess it was him.

(Testimony of John J. Keane.)

Q. Came to you at the saloon?

A. No, I quit the saloon in 1902.

Q. This was afterwards?

A. I think he came out to my house and wanted to buy it.

Q. Did he tell you what they were paying for claims?

A. Yes, he did; I don't remember now how much it was.

Q. You understood there was a regular price for claims, or did you know anything about that?

A. No, I didn't.

Q. Did you have some arrangements with Pritchard at the time you sold to him that he was to pay Wells the money you had borrowed from him?

A. Wells was there, and I think Wells give me the money that was coming.

Q. And he took his pay out? A. Yes.

Q. You were asked something about an interview you had with some of the officials here last March. I think you mentioned Mr. Ruick's name.

A. Yes, sir.

Q. Did Mr. Ruick say to you at that time in substance or effect that unless you testified in a certain way that you would be prosecuted?

A. Well, no, he didn't. He didn't say anything much about it.

Q. Did he say to you in substance that if you would testify you would be granted immunity or that they wouldn't prosecute you?

(Testimony of John J. Keane.)

A. He said something about that; I don't remember.

Q. That was the same Ruick that was tried here for wrongdoing before Judge Whitson, as you understand it?

A. He was the district attorney.

Q. And discharged from his office for wrongdoing and procuring indictments in this very case, wasn't he?

A. I don't know. I heard so, something like that.

Q. So far as you are concerned, Mr. Keane, all the statements in this complaint that you entered this land for the benefit of anybody else are absolutely false, are they not?

A. Yes, sir.

(Witness excused.)

[Testimony of George G. Gibson, on Behalf of the Complainant.]

GEORGE G. GIBSON, produced as witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your business, Mr. Gibson?

A. I am in the cigar business at present.

Q. What was your business in March, 1902?

A. Right at that time I don't think I was doing anything, but shortly afterwards I was in the livery business.

Q. And you made an entry under the Timber and Stone Act in March, 1902?

A. Yes, sir.

Q. I show you sworn statement, signed George G. Gibson, March 25, 1902, and ask you if that is your

(Testimony of George G. Gibson.)

signature to it? A. Yes, sir.

Q. And is this your signature to the testimony of claimant before the land office? A. Yes, sir.

Q. Signed June 17, 1902? A. Yes, sir.

Mr. BUNDY.—Read the description involved so that I can get an objection in.

Mr. GORDON.—It looks like the northwest quarter of section 21, township 6 north of range 6 east, Boise Meridian.

Mr. BUNDY.—Enter an objection to the introduction of any evidence relative to the northwest quarter of section 21, township 6 north of range 6 east, Boise Meridian, for the reason that said lands are not involved in this action, not mentioned in the bill of complaint, and any evidence relative thereto is incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. Mr. Gibson, who was the first one that spoke with you that you remember of, about taking up one of these timber claims?

A. It seemed to be the general talk. I can't remember any certain party speaking to me about it.

Q. Did Pat Downs speak to you about it?

A. I think not; not to the best of my recollection I don't think he did.

Q. You did locate as you said on a piece of property up here in the northern part of the State?

A. Yes, sir.

Q. Do you remember who prepared that sworn statement that I have just shown you?

A. Pritchard I believe.

Q. Did Pritchard prepare that (showing witness

(Testimony of George G. Gibson.)

paper)?

A. I believe he did, yes. To the best of my knowledge he did.

Q. Well, had you talked with Mr. Pritchard before you had him prepare that paper?

A. No, sir, I didn't know the gentleman.

Q. You had never seen him that you know of until you went there to have him prepare that paper?

A. No, sir.

Q. Who introduced you to Pritchard that day?

A. I had no introduction.

Q. Did anyone direct you to see Mr. Pritchard?

A. I think Wells did.

Q. John I. Wells? A. Yes, sir.

Q. Then you had had some talk with Mr. Wells before you made this entry?

A. That was after we came back from there.

Q. That was your understanding as to what you were to do with this property and what you were to make out of it when you went up there to make that entry?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, asking the witness to testify to a conclusion rather than to facts.

A. That some company was going to take it, but I didn't know who they were at the time.

Q. How much were you to get over and above your expenses?

A. I don't know. At that time there was different prices.

Q. What was your general understanding?

(Testimony of George G. Gibson.)

Mr. BUNDY.—I object to his general understanding unless based on conversations.

A. I had no talk with anybody that knew exactly what it was to be.

Q. Was it to be \$200 or \$300 or what?

A. It was to be anywheres from two to three hundred.

Q. When you made up your mind to take up one of these claims did you have the money at that time with which to purchase it?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

A. Well, I possibly had the money, yes.

Q. Who went up to view this claim with you?

A. Well, I believe there was six of us, Mr. Downs, Will Lane, Mr. Hoover, myself, and there was two gentlemen I didn't know; I knew one of them at that time, but I was very slightly acquainted with him, but the other two, I don't know who they were.

Q. Do you remember who arranged for the party to go?

A. No, I don't know who did the arranging for the party to go.

Q. Who told you where you were to meet to go, or did they come to your house?

A. I think we were to meet at the Pacific Hotel, or at the Ransome corral, where we got the team.

Q. You don't know which?

A. No, I don't.

Q. Do you know who told you to meet there?

A. No, I don't.

(Testimony of George G. Gibson.)

Q. Did you know any of these other people before you joined this party?

A. Yes, I knew Mr. Lane, I was slightly acquainted with Mr. Hoover, I knew Mr. Downs.

Q. Who told you the party was going on that day?

A. I couldn't say that. I couldn't say who told me, but we had it arranged among ourselves, but I don't know who told me; I couldn't say who did.

Q. And who located you on this ground?

A. Mr. Downs.

Q. And did he take you out to certain ground?

A. Yes, sir.

Q. And show you the claim you were to take up?

A. Yes, sir.

Q. Did he ask you if you liked that claim or if you would rather have another claim, or just the one claim that you were to take?

A. He just showed us the claims and said, "There is timber on all of them; I don't suppose there is any particular choice."

Q. Do you remember which one of that party was the first one to be located?

A. No, I do not.

Q. Was anything said about how much you should pay for the locating fee? A. \$25.

Q. Who did you pay it to?

A. I think I paid it to Downs; I am not positive whether I paid it to Downs or Wells, I think I paid it to Downs.

Q. Did you know you would have to pay that to

(Testimony of George G. Gibson.)

Downs before you went up there?

A. Yes, sir, I knew that was what was charged.

Q. Do you remember who it was told you that?

A. I don't know who told me that.

Q. Did Mr. Downs give you a description of that property, or did you get it after you got back here?

A. I think he had the description right with him.

Q. Did he give you a slip of paper with it on?

A. I think he did.

Q. Where did you take that?

A. I took it to Mr. Wells.

Q. Who told you to take it to Mr. Wells?

A. Well, I think Downs did.

Q. And you took it to Mr. Wells?

A. Yes, sir.

Q. Did you have any conversation with him then about where you were to get the money to prove up, or understanding?

A. I don't know whether I did at that time or not. I think possibly I did.

Q. And he directed you to Pritchard to prepare your papers?

A. Yes, sir.

Q. Did you pay Mr. Pritchard anything for preparing the papers?

A. No, sir.

Q. And did you take the description to Pritchard's office?

A. Well, I must have taken it there or he couldn't have gotten it unless he had got it from Wells or Downs.

Q. And did he have that paper prepared when you arrived there?

(Testimony of George G. Gibson.)

A. No, sir.

Q. Now, when you got ready to prove up, did anybody notify you that it was time to prove up?

A. Mr. Wells told us when we came down, I believe that it would be ninety days before we could prove up.

Q. All of you went to Wells' office when you came back?

A. I don't know whether it was his office or Pritchard's office.

Q. Did the same person that prepared your sworn statement prepare the others' at the same time?

A. I am not positive about that, whether they was all made there or not. I think there was one or two others made, but I really don't know who they was now.

Q. When you came down you all went in the team to the same place?

A. No, not that night.

Q. When was it?

A. I think possibly the next day or the next two days.

Q. The others were there that went on that trip?

A. I don't think they were all there.

Q. Which of them were there?

A. There was some one or two others, but I don't just remember who they were. There were one or two there, but I don't remember who they were. I can't remember eight or nine years very well.

Q. Was it one or two of the party that had gone up with you?

A. Yes, sir.

Q. Now, I was asking you about your final proof

(Testimony of George G. Gibson.)

and you said something about Mr. Wells. I was asking you—did you say Mr. Wells told you that in about ninety days you would have to prove up?

A. I think he did, yes; to the best of my recollection.

Q. And when the time came what provision did you make about getting money to prove up?

A. I got the money of Mr. Wells.

Q. Did you go to see Mr. Wells or did he come to see you?

A. I don't remember just how I saw him, but I had a conversation with him in regard to the money.

Q. Do you remember where you got the money?

A. I think it was paid to me in Pritchard's office.

Q. And do you remember how much it was they gave you with which to prove up?

A. I think about \$412 or \$412.50.

Q. Wells was there as I understand?

A. Yes, sir.

Q. And was Pritchard there, too?

A. Pritchard was there, yes.

Q. And you went directly from there to the land office and made your proof?

A. Yes, sir.

Q. Was anything said to you on that occasion as to where you were to say you got the money?

A. I don't know whether they asked me where I got it; they asked me if the money was mine.

Q. Was anything said when you were given the money as to whether or not you were to say it was yours?

A. I don't know whether there was or not.

(Testimony of George G. Gibson.)

Q. Then you went to the land office and paid this money in, and then did you go back to Mr. Pritchard's office? A. I think I did.

Q. And did you sign a deed for the property there?

A. I don't believe that I signed any deed at that time.

Q. What did you go back to Pritchard's office for, do you remember?

A. Yes, I went back there to give him the receipt.

Q. Give him the receipt they gave you at the land office? A. Yes, sir.

Q. You were told to bring that back?

A. Yes, sir.

Q. And after that how long was it before you went back there again?

A. I don't know; I signed a deed later on, I don't know how long after it was. It was somewhere from six months to a year afterwards, but I don't just remember how long after it was.

Q. Was it the day you got your final proof that you went there and signed the deed?

A. I never did get my final proof.

Q. And did you ever get a patent?

A. I never did.

Q. Was the matter held up in the land office?

A. I really don't know why. I inquired about it, but I didn't know what the trouble was. I never got any patent, I don't know what the trouble was.

Q. When you went back to Pritchard's office with this receipt did you sign any paper then?

(Testimony of George G. Gibson.)

A. Well, I don't know whether I signed—I didn't sign any deed at that time.

Q. Was it a contract?

A. To the best of my knowledge, I don't know, I may have, whether I signed a contract or not, I don't know, but I hardly think I did.

Q. Do you remember signing anything?

A. I don't know whether—well I won't say, because I don't remember.

Q. Was any money given you at that time?

A. Yes, sir.

Q. How much?

A. There was, I think, \$250 given me.

Q. And that was the understanding what you were to get all along, wasn't it?

Mr. BUNDY.—I object to that as incompetent.

A. I didn't know exactly what I would get.

Q. When you got this money, or had the understanding you could get the money, you didn't give your note for that money, did you?

A. No, sir.

Q. And you weren't to pay any interest on it?

A. Nothing said about it.

Q. Wasn't there an understanding then that you would convey it to the people that gave you the money, or to somebody they asked you to?

A. I never had any understanding of that kind at all. There was a general understanding that someone would take, but I didn't know who it was.

Q. The general understanding was that the people they were representing, you would make a deed

(Testimony of George G. Gibson.)

to them?

A. I thought there was somebody, but I didn't know; Wells never told me and Downs never told me anything in regard to the matter.

Q. You didn't know Mr. Wells before that?

A. I was slightly acquainted with him, yes.

Q. Did you ever have any business with him?

A. No, I think not, only this.

Q. Why did you suppose he was loaning you \$400 without any receipt, or without paying any interest on it for an indefinite period?

A. I didn't know why he was doing it. I supposed there was someone back of it; I didn't know.

Q. What did you think you were going to do in return for that?

A. I thought I was going to sell them that piece of land, that timber.

Mr. GORDON.—I will state that I have not the deed or the patent and we will endeavor to account for them later on. We offer in evidence the sworn statement of George G. Gibson, dated March 25, 1902, his testimony before the land office, dated June 17, 1902, the cross-examination before the land office of Mr. Gibson, the certificates of the register and receiver of the land office, dated June 17, 1902.

(Gibson papers marked Plaintiff's Exhibit No. 30A to 30L, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Gibson, the idea of taking a stone and timber claim was suggested to you, as I understand

(Testimony of George G. Gibson.)

your evidence, by the general talk up in town here rather than by any particular person?

A. Yes, sir.

Q. No person asked you to go and enter a timber and stone claim for them, did they?

A. No, sir.

Q. You were not at any time acting as an employee or hireling of any person when you made your timber and stone entry, were you? A. No, sir.

Q. In your original application which you filed in the land office on March 25, 1902, which is the first paper you filed after returning from viewing the land, you testified under oath among other things as follows: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself."

A. Yes, sir; I testified to that.

Q. And that was absolutely true, was it not?

A. Yes, sir.

Q. And at the time you made your application to purchase under the Timber and Stone Act you had made no such agreement, orally or in writing, express or implied, with any person, had you?

A. No, sir; I had not.

Q. You were acting solely and exclusively for yourself? A. Yes, sir.

Q. And were acting for no one else?

A. No, sir.

(Testimony of George G. Gibson.)

Q. Your only object in entering the claim was that when you got title you could sell it at a profit?

A. That is what I took it up for.

Q. The amount of that profit would depend upon the value of the claim when you came to sell?

A. Yes, sir.

Q. And at the time you made your timber and stone entry you didn't know what that value would be and didn't know how much profit you would make, did you?

A. No, sir.

Q. No one had agreed to give you any price for it?

A. No, sir.

Q. And no one at that time had offered to buy it from you at any price?

A. No, sir.

Q. You were prompted solely by the belief and general understanding that there would be a market for it?

A. No, sir; that I would just take a chance.

Q. Now, Mr. Gibson, at the time you made your final proof, had you at that time made any contract or agreement, express or implied, with any person, firm or corporation, by which you had obligated yourself to convey that land to them, at the time you made your final proof?

A. No, I had not.

Q. It is alleged in the bill of complaint by the Government in this lawsuit we are trying, Mr. Gibson, that you with others, made your timber and stone entry under an agreement and arrangement with the Barber Lumber Company, Mr. Barber, Mr. Moon, Mr. Kinkaid, Mr. Wells and others by which you was to turn over any title you might get to those

(Testimony of George G. Gibson.)

men or some of them or to such person as they should direct. I want to ask you the precise question, is that allegation true or false?

A. I had no agreement whatever.

Q. Then, that allegation, so far as you are concerned, is not true? A. No, sir.

Q. Now, you paid a location fee of \$25 to Downs, I suppose? A. Yes, sir.

Q. And you paid that simply as part of your chance you were going to take? A. Yes, sir.

Q. Didn't know whether you would get it back at all at that time, I suppose?

A. No, I didn't know.

Q. You had to pay the land office fees I suppose at the time you filed? A. Yes, sir.

Q. You paid those yourself? A. Yes, sir.

Q. And you had to pay certain advertising fees?

A. Yes, sir.

Q. And you paid that yourself?

A. Yes, sir.

Q. And all this was paid prior to any talk you had with anybody about selling this property?

A. Yes, sir.

Q. You had had no talk with John I. Wells with reference to getting money to prove up on or with reference to this land at all until a short time before you made final proof?

A. No, I talked—I don't know whether I talked to him at all about it.

Q. At the time you went to Mr. Downs did you state to him in substance, that you would have to

(Testimony of George G. Gibson.)

have some money to make final proof with?

A. No, sir.

Q. Did you state to him in substance that you would like to borrow some money to make final proof with? At the time you had the talk with Mr. Wells did you state to him in substance that you would like to borrow or get some money to make final proof; I mean Mr. Wells?

A. I think I told him I would have to have the money to prove up with.

Q. Did he give it to you? A. Yes, sir.

Q. And you took the money he gave you to the land office and made final proof and got your final receipt? A. Yes, sir.

Q. And you took that to Mr. Pritchard?

A. Mr. Pritchard's office.

Q. By arrangement with Mr. Wells?

A. Yes, sir.

Q. And did you at that time understand that the final receipt was left there as security for the money he had loaned you to prove up with?

A. I supposed that was what they kept it for.

Q. And the only claim Mr. Wells had upon your land at that time was that he had loaned you or advanced you a certain sum of money and when that land was sold before the final receipt would be surrendered Mr. Wells would have to be paid back the money he had advanced to you? A. Yes, sir.

Q. At that time there was no understanding which obligated you to convey that land to Mr. Wells or Pritchard or anyone else? A. No, sir.

(Testimony of George G. Gibson.)

Q. And there was no agreement which would have prevented you from selling it to me, if I had offered you a thousand dollars? A. No, sir.

Q. So that your sole understanding with Mr. Wells was that he advanced you a certain sum of money and you were to leave, and did leave your final receipt with him as security, and the final receipt was left there solely for that purpose?

A. That was what I supposed it was for, to protect themselves.

Q. It wasn't left there as part payment on the land? A. No, sir, nothing of the kind.

Q. And you hadn't agreed to sell it to him?

A. No, there was no agreement at that time.

Q. Either express or implied? A. No, sir.

Q. And you, yourself, Mr. Gibson, understood that you had perfect right to sell it to anybody that would pay you the most for it?

A. I suppose I could have if I had wanted to.

Q. If someone else had offered you more money?

A. Certainly, I don't see that there was anything to hinder me from doing it.

Q. You were under no moral obligation to sell it to Wells, or anyone he would direct, were you, at the time you got your final receipt?

A. Before I got my final receipt there was nothing of that kind; of course after I got my final receipt I received \$250.

Q. That was the sale? A. Yes, sir.

Q. It was understood then that you had sold it?

A. Yes, sir.

(Testimony of George G. Gibson.)

Q. The possession of final receipt became evidence of title? A. Yes, sir.

Q. At the time you took the money the original purpose of bringing the receipt back to them was simply to secure them for the money they had advanced, was it not?

A. I supposed that was it.

Q. There was a little evidence crept in here in answer to a question, Mr. Gibson, as to whether—did you have any talk with Wells at all about him furnishing you money to prove up with at any time before you filed your first papers?

A. I had no talk with Wells in regard to the matter at all.

A. Or did you have a talk with anybody else mentioned here, Wells, Kinkaid, Barber, Moon, Downs, Steunenbergh, Palmer or Pritchard about anyone advancing money to you prior to the time you made your first application? A. No, sir.

Q. I think in your direct evidence, in answer to a long question your answer might create the impression that you had had some talk with Wells about the money to prove up with before you made your first filing. You didn't wish to be so understood, did you?

A. Well, now, where do you mean, the first filing?

Q. When you filed your first papers in the land office, when you came back from Centerville, up to that time had you had any talk with Wells about loaning you money?

A. Not up till I made the first filing, I had had

(Testimony of George G. Gibson.)

no talk with him about money.

Q. And nobody had offered you money?

A. It was just an understanding on the streets that they would furnish the money.

Q. That understanding was that they represented someone that was buying timber claims?

A. Yes, sir.

Q. And your understanding was that if you sold it to them you would get the money?

A. That was all.

(Witness excused.)

At this time a recess was taken until 2 P. M.

Court met at 2 P. M., February 8th, 1909, pursuant to adjournment; the Examiner and counsel for the respective parties being present.

[Testimony of Benjamin R. Allen, on Behalf of the Complainant.]

BENJAMIN R. ALLEN, being first duly called and sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Allen, you are Benjamin R. Allen, are you? A. Yes, sir.

Q. Where do you reside?

A. I reside at the Barber mill at the present time.

Q. That is near Boise?

A. It is six miles from Boise.

Q. How long have you resided there?

A. About three months.

Q. What was your occupation in August, 1903?

A. I was teaming at that time, I think.

(Testimony of Benjamin R. Allen.)

Q. Who were you working for?

A. In August, 1903, I wasn't working for anybody in particular at that time.

Q. How old a man are you?

A. Thirty-two years old.

Q. Did you make an entry under the Timber and Stone Act in 1903?

A. Yes, sir.

Q. I show you timber and stone sworn statement, dated August 10, 1903, and ask you if that is your signature attached?

A. Yes, sir.

Mr. BUNDY.—Let me interpose something before I forget it. The defendant moves to strike out all of the evidence of George G. Gibson and John J. Keane, in addition to the reasons heretofore given, for the following reasons: That the lands embraced in the respective timber and stone entries are not involved in the issue made by the pleadings in this case, are not mentioned or referred to in the bill of complaint, and no charge is made of any fraud or other violation of law on the part of the said entrymen with reference to the lands they procured by the bill of complaint.

Q. I show you testimony of Benjamin R. Allen taken before the land office November 6, 1903. Is that your signature there?

A. Yes, sir.

Q. Who first spoke with you about taking up a timber and stone claim?

A. A friend of mine by the name of Thompson.

Q. Do you know his first name?

A. Sherman.

Q. State what he said about it.

(Testimony of Benjamin R. Allen.)

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and asking for hearsay evidence.

A. We talked on several different occasions, but I don't know as I can remember just what was said.

Q. Well, as near as you can.

A. He told me on one occasion that there was a chance for a man to make a little easy money.

Q. Did he tell you how you could do it?

A. That he knew of others, friends of his, that were doing this. He spoke of this easy money proposition before he let me into the timber proposition proper. It was two or three different times I was talking with him on this subject before he entered into the timber discussion.

Q. Continue, please, what you were saying.

A. I think I about answered the question.

Q. Was that the first time he spoke with you?

A. That would embrace about three or four different times.

Q. And have you seen Thompson recently? Do you know what has become of him?

A. I haven't seen Thompson for about three years.

Q. Do you know where he is? A. No, sir.

Q. Well, did you have any money at that time with which to purchase property?

A. Not very much at that time; no, sir.

Q. Well, you went up and located on a piece of property? A. Yes, sir.

Q. Did you go up alone or did someone go up

(Testimony of Benjamin R. Allen.)

with you?

A. There was five in the party, I believe.

Q. Do you remember who they were?

A. I don't remember distinctly the names of but two persons in the party with the exception of the locator.

Q. Did the locator go with you?

A. The locator joined the party the second day out from town here.

Q. Who was the locator? A. Pat Downs.

Q. Where did the party start from?

A. In Boise.

Q. What part of Boise?

A. In front of the Camas Prairie barn.

Q. Who arranged the party, do you know?

A. A man by the name of Humphrey.

Q. Now, were you to spend any of your own money in this transaction?

Mr. BUNDY.—That is objected to as incompetent, irrelevant, and immaterial, not asking for any conversation with any person, asking for the conclusion of the witness, and based upon no evidence introduced.

A. At that time do you mean?

Q. When you started did you understand that the money would be furnished or that you were to furnish your own money?

A. When I first started I didn't understand anything directly in regard to it?

Q. What did you understand indirectly and from whom?

(Testimony of Benjamin R. Allen.)

A. From my talks with Thompson and Humphrey—

Q. (Interrupting.) What was the understanding?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and asking for hearsay evidence and statements made to him by a person not of record in this action.

A. I was led to believe that this man Humphrey would furnish the money.

Q. And what were you to do with the property?

A. Transfer it to Humphrey.

Q. What were you to get out of it?

A. There wasn't really an understood amount between Humphrey and myself, not at that time.

Q. Was there before you filed at any time do you remember?

A. Before I filed, no; there wasn't a definite amount.

Q. After Pat Downs located you did he give you a description of the property?

A. I copied a description of the property from a map that he had.

Q. And you returned to Boise?

A. Yes, sir.

Q. Did you pay Pat Downs a locating fee?

A. No, sir.

Q. Did you ever pay him a locating fee?

A. No, sir.

Q. When you returned to Boise who prepared this paper that I showed you, this sworn statement?

A. The first one you showed me?

(Testimony of Benjamin R. Allen.)

Q. Yes.

A. John Kinkaid I believe; I got it at his office anyway.

Q. How did you happen to go to John Kinkaid's office? Did you know him before this?

A. No, sir.

Q. How did you go there, why?

A. I was directed to his office by Mr. Humphrey.

Q. And he drew this paper for you?

A. Yes, sir.

Q. Did you pay him for preparing that paper?

A. No, sir.

Q. Then you took it up to the land office to file?

A. Yes, sir.

Q. And did you have to pay any money at the land office when you filed it?

A. Yes, sir.

Q. How much?

A. I don't remember just the amount.

Q. Approximately how much?

A. Six or seven dollars.

Q. Where did you get that six or seven dollars?

A. That was supplied by Kinkaid too I think.

Q. Was that given to you at his office by him when he prepared this paper?

A. It was given to me at that time; whether it was in his office or close somewheres there—

Q. And then when was there anything said about proving up?

A. I don't recall anything that was said about proving up other than what I understood at the land

(Testimony of Benjamin R. Allen.)

office, it was to be proved up on in November.

Q. Where did you understand you were to get your money to prove up with at that time?

A. I understood I was to get the money from Mr. Humphrey.

Q. When the time came to prove up did you have money to prove up with yourself or did you get it from someone else?

A. I got it from Mr. Humphrey.

Q. Were you with Mr. Humphrey at the time he got the money? A. Yes, sir.

Q. Where did he get it?

A. At the Capital State Bank.

Q. Did you give him a note for it?

A. No, sir.

Q. Did you pay him any interest on it?

A. No, sir.

Q. And then you went to the land office and paid that money? A. Yes, sir.

Q. From the land office did you go anywhere with reference to this property?

A. From the land office I went nearly directly to the office of a lawyer I think by the name of Pritchard.

Q. Who directed you to go there?

A. Mr. Humphrey.

Q. And what did you do when you got to the office of Mr. Pritchard?

A. Well, I handed him the receipt I got at the land office and signed a deed and that was about all.

Q. That was the same day you paid your money

(Testimony of Benjamin R. Allen.)

into the land office? A. Yes, sir.

Q. Did you get any money at Mr. Pritchard's office that day? A. Yes, sir.

Q. How much? A. \$100.

Q. Who gave it to you?

A. I think Mr. Humphrey gave me that.

Q. Did you see where Mr. Humphrey got the money? A. No, sir.

Q. Did you ever sign but the one deed?

A. Never did.

Q. Were you ever asked to make another deed?

A. No, sir.

Q. Did you know to whom you were deeding this property?

A. No, I didn't. I supposed it was to Humphrey.

Q. Did you know Horace S. Rand?

A. No, sir.

Q. Did you know Mr. Pritchard?

A. No, sir.

Q. Never had seen him before?

A. No, sir.

Q. I show you deed dated February 9, 1904, conveying certain property to Horace S. Rand, and ask you if that is the deed you signed, if that is your signature?

A. That is my signature, yes, sir.

Q. How long were you at Mr. Pritchard's office on that occasion? A. About ten minutes.

Q. Was this paper prepared when you got there?

A. Yes, sir.

(Testimony of Benjamin R. Allen.)

Q. Did this matter turn out just as it was your understanding in the beginning it would?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, as to what his understanding was.

A. Yes, sir.

Q. When Mr. Humphrey gave you this money with which to prove up in the land office was there any direction given you as to where you should say you received that money or whether or not it was your own?

A. I think he gave me a little information regarding that.

Q. What did he tell you to say?

A. He told me it wouldn't be wise to state that the money was all my own that I had in my possession at the time, that I had better say that I borrowed some from a friend or relative.

Q. And did you say that, and that the rest was your own?

A. At the land office?

Q. Yes.

A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone sworn statement, dated August 10, 1903, testimony of claimant, dated November 6, 1903, and the cross-examination, final proof papers, the certificates of the register and receiver, dated November 6, 1903, and the deed made by Benjamin R. Allen to Horace S. Rand, dated February 9, 1904, to the northeast quarter of section 30, township 6 north of range 8 east, Boise Meridian, and the patent to the property.

(Allen papers marked Plaintiff's Exhibit No. 31A

(Testimony of Benjamin R. Allen.)
to 31N, inclusive).

Mr. GORDON.—Q. Mr. Allen, did you know the witnesses that went to the land office with you or did somebody else procure them for you?

A. I knew the witnesses but I can't remember what are their names.

Q. Do you know John I. Wells?

A. No, sir.

Q. Never met him?

A. I know him by sight too, yes.

Q. You never met him? A. No.

Mr. FRASER.—In addition to the general objection heretofore made to the introduction of all exhibits in this case, we object specifically to Plaintiff's Exhibit No. 31D for the additional reason that it impeaches the testimony of their own witness.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Allen, who are you working for at the present time?

A. The Barber Lumber Company.

Q. How long have you been working for the Barber Lumber Company?

A. Nearly three months.

Q. When did you first talk with any representative of the government about this timber and stone claim?

A. When did I first talk?

Q. Yes. A. Saturday afternoon.

Q. Last Saturday afternoon? A. Yes, sir.

Q. Who was the gentleman you talked with at

(Testimony of Benjamin R. Allen.)

that time?

A. I don't know his name.

Q. Is he in the courtroom?

A. No, I guess not.

Q. Who did he tell you he was, if he told you what his business was?

A. He didn't tell me what his business was.

Q. How did you know he was a representative of the Government?

A. I saw him in the courtroom in company with this gentleman here.

Q. Did he make any promises?

A. No, sir.

Q. Did he say anything to you about punishing you or not punishing you for not testifying?

A. No, sir.

Q. Didn't make you any promises about that?

A. No, sir.

Q. Did he take down your statement in writing?

A. He took some notes.

Q. Have you been asked since to sign some statement? A. No, sir.

Q. Who was this man Thompson, what was his first name? A. Sherman Thompson.

Q. Sherman Thompson? A. Yes, sir.

Q. Where did he live in 1903?

A. He was running a barber-shop on Idaho street, near Eighth at that time.

Q. And was he the first man that spoke to you as you now remember? A. Yes, sir.

Q. Did he tell you that he was working for any-

(Testimony of Benjamin R. Allen.)

body or representing anybody?

A. No, sir.

Q. He was a friend of yours as I understand?

A. Yes, sir.

Q. Was this conversation that you had with Mr. Thompson simply a casual conversation between two friends about the way to make some money?

A. Yes, it could be termed that.

Q. Was it anything else? Did he tell you he wanted to employ you or hire you for any purpose?

A. No, sir.

Q. And the conversation was just a casual one between two friends about timber and stone entries was it? A. Yes, sir.

Q. And did he in that conversation say to you that there were certain lands which could be procured by making a timber and stone entry and thereafter you could sell them at a profit?

A. No, he never spoke in that manner.

Q. Did he give you to understand that there was a sale for timber and stone lands here at a price in excess of what it would cost you to get them and that you could make a profit by so doing?

A. Yes, he did.

Q. And was that understanding, was that when you made up your mind that you would exercise your right as a citizen and take up a timber and stone claim?

A. I don't know whether I understand your question.

Q. Was that your idea, at the time you exercised

(Testimony of Benjamin R. Allen.)

your right as a citizen and made an entry for a timber and stone claim, that you could get it and sell it as a profit for yourself? A. Yes, sir.

Q. Did you make your timber and stone claim for the purpose of selling it and making a profit for your own benefit?

A. I guess I did, yes.

Q. Were you employed by anybody as a hireling or for wages to enter this for somebody else or did you enter it for yourself?

A. I don't know. I suppose it would be a little on the wage earner proposition.

Q. And on what do you base that?

A. On my relations with Mr. Humphrey..

Q. What was Mr. Humphrey's first name?

A. I don't know.

Q. What was his business?

A. His business was farming I think at that time.

Q. In this locality?

A. Yes, near Boise.

Q. Tell us what conversation you had with Mr. Humphrey that made you think you was working for him.

A. I had no direct conversation with Mr. Humphrey.

Q. None at all?

A. How I come to understand this proposition was through Mr. Thompson; he talked with Mr. Humphrey and also with me and brought about this proposition between Mr. Humphrey and myself.

Q. And did Mr. Thompson tell you that Mr. Hum-

(Testimony of Benjamin R. Allen.)

phrey wanted to employ you?

A. No, not in that light, no, sir.

Q. Did he tell you Mr. Humphrey was in the market to buy and if you took it you could sell it to Mr. Humphrey at a profit?

A. No, he didn't tell me that.

Q. You say you understood you was working for Mr. Humphrey. Is that the fact?

A. No, I didn't understand it in that light exactly.

Q. Now, at the time you made your first application to purchase this land in the land office you swore to this document which is marked Plaintiff's Exhibit 31D, did you not, and filed it?

A. Yes, sir.

Q. That is dated August 10, 1903.

A. Yes, sir.

Q. Now, at the time you filed that first paper in the land office you swore to this statement among other things: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." At the time you signed and swore to that you thought that was absolutely true, Mr. Allen, that you hadn't made any agreement of any kind?

A. I may have thought it was true, but it evidently wasn't.

Q. What makes you think it wasn't true?

A. The agreements were practically made at the

(Testimony of Benjamin R. Allen.)

time that was sworn to.

Q. What agreement was made? You hadn't talked to Mr. Humphrey, you say.

A. If you want to understand exactly how this agreement was brought about I can tell you how I understood it.

Q. What I want to find out, did you have any talk with Mr. Humphrey before you filed this original paper.

A. I had some conversation with him, yes sir.

Q. Where was that conversation?

A. That was one time in Sherman's barber-shop and one time on the street.

Q. Give us the conversation, just what Mr. Humphrey said and what you said in the barber-shop.

A. I said I didn't have no direct conversation in regard to timber with Mr. Humphrey.

Q. Had you ever had a direct conversation with Mr. Humphrey at the time you signed this first statement?

A. No, sir.

Q. Had you had any talk with John I. Wells?

A. No, sir.

Q. I mean by that this statement marked 31D and dated August 10, 1903, which I have shown you, at the time you filed that in the land office had you had any talk with Mr. Humphrey about this stone and timber entry?

A. Nothing only just he told me that on a certain date that he would have a party ready and that I should go out with that party.

Q. Had you had any talk with him about any-

(Testimony of Benjamin R. Allen.)

thing more than that? A. No, sir.

Q. Had you had any conversation with Mr. Wells at that time about this?

A. No, sir, I didn't know Mr. Wells at that time.

Q. Had you had any conversation with Mr. Kinkaid at that time?

A. I didn't know personally Mr. Kinkaid at that time.

Q. Had you had any talk with Mr. Pritchard?

A. I didn't know Mr. Pritchard.

Q. Had you had any talk with Mr. Barber, Mr. Moon or anybody connected with the Barber Lumber Company? A. Didn't know them.

Q. Had you had any talk up to the time you filed this paper, except the talk with Mr. Humphrey and the talks with Sherman Thompson?

A. Yes, sir.

Q. Give us the first conversation you had with Thompson saying what he said and what you said.

A. The first intimation of the proposition was that he asked me if I wanted to earn a little easy money, and there was a few customers in the shop at that time so he didn't state the proposition any further than that.

Q. Yes?

A. But later, two or three days later, I was in his shop and there happened to be nobody in and he outlined the proposition to me then.

Q. Tell us what he said and what you said.

A. I can't remember the conversation just word for word; I can give you the idea. He told me that

(Testimony of Benjamin R. Allen.)

there was some fellers here buying up land or locating people on land and buying it from them and paying them for their trouble, and he give me an outline of the proposition. He said he had had something to do with the proposition and he knew others—he give me the names of several others that were in this proposition at that time and showed it up to me in that light, that they were exercising their rights that would practically do them no good individually, and getting two or three or four hundred for their trouble out of it, and no danger in connection with it, and two or three days after that he introduced me in his shop to this man Humphrey. He told me that Humphrey—

Q. (Interrupting.) This was before you filed?

A. This was before I filed. He told me Humphrey was dealing with this company or whatever it was, and that he was locating people on the property, and that he would fix me out all right, so Mr Humphrey told me when this party was going out and I went with this party.

Q. Have you stated all of this conversation?

A. I have stated the substance of it.

Q. Have you stated all of the substance of the conversations you had with Thompson and Humphrey relative to entering this timber and stone claim?

A. Practically, yes.

Q. All of the conversations you had up to the time you made your first filing?

A. I think that is practically all, yes.

Q. To August 10, 1903? A. Yes, sir.

(Testimony of Benjamin R. Allen.)

Q. Up to August 10, 1903, had anybody said to you that they would buy your timber claim?

A. No, sir.

Q. Had you offered your claim for sale to anybody at that time? A. No, sir.

Q. Had you had any talk with anybody at all about selling it? A. No, sir.

Q. And up to August 10, 1903, and up to the time you filed this paper, at that date were you at perfect liberty so far as any contract existed to sell it to anybody who would pay you the most for it?

A. No, sir.

Q. Why were you not, on August 10, 1903, when you filed this paper, after you had filed it and left the land office were you under any obligation which would prevent you from selling it to anybody who would give you the most for it?

A. I was under obligation to Mr. Humphrey, I should think.

Q. In what way?

A. Because he was the man that located me on the ground and furnished the money.

Q. How much money did he furnish?

A. All the money it took.

Q. Did you understand all through this matter that you were to turn this land over to Mr. Humphrey? A. Yes, sir.

Q. And that Mr. Humphrey had practically bought your claim? A. Yes, sir.

Q. And did you understand that the money he advanced to you was part payment on your claim?

(Testimony of Benjamin R. Allen.)

A. No, I didn't understand it in that light.

Q. Didn't you understand you had sold it to him at that time?

A. There had been no sale up to that time, only just a sort of verbal agreement between him and myself.

Q. Was that verbal agreement that you would sell to him?

A. There was no direct agreement.

Q. Was there any agreement?

A. There was a vague agreement, yes, sir.

Q. What was that vague agreement, or what was it based on?

A. It was based on the conversation I had with Thompson.

Q. Was it based on anything else other than that?

A. If I had been acting independently probably I would not have met Mr. Humphrey or located the timber claim.

Q. The vague understanding was, and you thought all the time that instead of buying a timber claim from the Government and selling it, you was entering one for Mr. Humphrey?

A. Yes, sir.

Q. You know, of course, that that was against the law?

A. Yes, sir.

Q. And you went up to the land office on August 10, 1903, and intentionally, deliberately and willfully swore to what you knew to be absolutely false?

A. Yes, sir.

Q. And you did that for the sake of making a

(Testimony of Benjamin R. Allen.)

little easy money? A. Yes, sir.

Q. And when you came to make final proof you were asked some questions were you not?

A. Yes, sir.

Q. And you wilfully testified before the land office to what you knew to be absolutely false, did you? A. Yes, sir.

Q. And you did that intentionally and wilfully?

A. Yes, sir.

Q. And you were doing that simply because you had an expectation that somebody would pay you some money for it? A. Yes, sir.

Q. And you were in the market to testify to anything anybody would ask you to testify to for pay?

A. Not anything, no, sir.

Q. So you were in the market at that time to swear to anything Mr. Humphrey wanted you to for a few dollars Mr. Humphrey was going to give you?

A. In regard to that, yes.

Q. You have had no change of heart, have you?

A. I would think so, yes, sir.

Q. As a matter of fact you are here testifying to-day because the man representing the Government told you if you didn't he would prosecute you?

A. No, sir.

Q. Didn't he tell you that if you didn't come up and—

A. (Interrupting.) The story I told him is practically what I have told here, only shorter and without any promises from him whatever.

Q. Didn't he tell you that the Government

(Testimony of Benjamin R. Allen.)

wanted you to come up and testify as you have testified and if you didn't you would be prosecuted?

A. No, sir, he told me I was expected to tell the truth.

Q. But he told you that if you didn't you would be prosecuted?

A. No, sir.

Q. Have you ever been before the Grand Jury?

A. No, sir.

Q. At any time?

A. No, sir, not at any time.

Q. I call your attention to the date of this deed. Did you sign it the day it is dated?

A. I don't remember whether it was before—

Q. (Interrupting.) Do you remember what was written in it at the time you signed it?

A. No, sir, I never read it over.

Q. Did you go up to Pritchard's office to acknowledge this?

A. Yes, sir.

Q. It is acknowledged on the 19th day of February, 1904. Was that the day you made it?

A. I don't think the date is correct.

Q. When do you think it was?

A. I think the date I signed the deed in Mr. Pritchard's office was about November 6th, or 7th, something like that.

Q. What makes you think that?

A. It was the same day I filed it.

Q. What day did you file it?

A. I proved up the 6th of November.

Q. Have you looked at the final proof papers?

A. No, sir.

(Testimony of Benjamin R. Allen.)

Q. You just recollect that? A. Yes, sir.

Q. You say that Mr. Humphrey at the time you made your final proof paid you \$100 in addition to what you had been already paid? A. Yes.

Q. So that what you got for your perjury was \$100? A. Yes, sir.

Q. And at the time he paid you \$100 or at any time prior to that had you agreed how much he should pay you for false swearing?

A. There was no definite agreement other than that I was given to understand it would be \$100 or more depending on the worth of the timber.

Q. You would get a higher price for swearing falsely for good timber than for poor timber?

A. Yes, sir.

Q. Who told you that?

A. Mr. Humphrey told me.

Q. State what he said about that?

A. I asked him what was I to get out of the proposition. He says "I don't believe they will stand more than \$100," he says, "however I will do the best I can for you."

Q. That was on the day you was to prove up?

A. Yes, sir.

Q. So there had been no talk about it prior to that? A. No, no definite amount.

Q. Did he say in that conversation that the price would depend on the quality of the timber?

A. No, I just supposed that myself.

Q. He never said anything about the quality of the timber? A. No, sir.

(Testimony of Benjamin R. Allen.)

Q. All of the statements in this 31D are false that you swore to, as well as the one I have called your attention to, are they not?

A. I don't remember all of the statements.

Q. Look it over and see if any of them are true (hands witness paper). Is there anything you swore to there that is true? Here, the statements are all contained in that paragraph (indicating). Do you find anything there that is true?

A. I don't know hardly how to answer that.

Q. You didn't intend to testify to anything that was true, did you? If you did it was a mistake?

A. The statements I made were practically all false, yes sir.

Q. And they were intended to be so?

A. They were intended to touch on the case as the circumstances arose.

Q. Now, referring to this cross-examination. Calling your attention to this Plaintiff's Exhibit No. 31T, marked cross-examination, that is signed by you, is it not? A. Yes, sir.

Q. One of the questions asked you is "What do you expect to do with this land and the lumber on it when you get title to it?" And you answered that: "I have made no plans, cannot say at this time." Had you made any plans at that time?

A. I believe I had made some plans.

Q. And they are the plans you have told us about? A. Yes, sir.

Q. "Where did you get the money with which to pay for this land and how long have you had

(Testimony of Benjamin R. Allen.)

same in your actual possession? A. I borrowed \$200 from a friend. The balance I earned. Have had it about six or seven months." Was that also false and intended to be false?

A. Yes, sir.

Q. And all of this false evidence was given in consideration of some unspecified and unnamed amount which your friend Thompson had told you your friend Humphrey would give you for false swearing?

A. I understood I was to get \$100 or more.

Q. All of those questions were testified to falsely in the expectation that your friend Humphrey would pay you something because of what your friend Thompson had told you? A. Yes, sir.

Q. Now, in this complaint in this particular lawsuit we are trying, it is alleged, Mr. Allen, that you entered into an agreement with the Barber Lumber Company. Is that true?

A. I didn't know the Barber Lumber Company.

Q. And with James T. Barber, did you know him? A. No, sir.

Q. And Sumner G. Moon? A. No, sir.

Q. William Sweet? A. No, sir.

Q. John Kinkaid?

A. I had no agreement with Kinkaid.

Q. Louis M. Pritchard? A. No, sir.

Q. Patrick H. Downs? A. No, sir.

Q. Albert E. Palmer? A. No, sir.

Q. And Horace S. Rand?

A. Didn't know them.

(Testimony of Benjamin R. Allen.)

Q. Frank Steunenberg?

A. I knew Mr. Steunenberg.

Q. Did you enter into an agreement with him?

A. No, sir.

Q. And John I. Wells? A. No, sir.

Q. It is alleged that you entered into an agreement by which you promised and agreed to turn over to those gentlemen I have named, or to such person as they should direct, the lands which you would procure from the Government under the Timber and Stone Act. Is that true or false as applied to you?

A. It is false.

Q. You never entered into any agreement with the gentlemen I have named? A. No, sir.

Q. And you never entered into an agreement with any person except the man you have testified to, this man Humphrey? A. That is all.

Q. And you don't know whether Mr. Humphrey was connected with the Barber Lumber Company?

A. I do not.

Q. And you don't know whether he was connected with any of the other gentlemen I have named? A. I do not.

Q. He was a farmer? A. Yes, sir.

Q. You never had any business with him since?

A. No, sir.

Q. You never had any business with him before?

A. No, sir.

Q. The substance of your evidence is that you went before the land office under an agreement which had been made for you by your friend Thomp-

(Testimony of Benjamin R. Allen.)

son with this man Humphrey by which you were to testify to things that were false and be paid \$100 for it? A. Yes, sir.

Q. Mr. Allen, you have told us of two or three, conversations you had with Thompson and two or three, or one at least, you had with Mr. Humphrey, in which he told you you would get \$100 or something. That talk with Humphrey was as I understand the day before or about the time you proved up, a short time before? A. Yes, sir.

Q. So that you never had any talk with Humphrey before the time you filed the first paper except the one you have told us about when he told you there was going to be a party going up on a certain day; that is correct, isn't it? A. Yes, sir.

Q. So that at the time, after you had gone up, looked over the land, been located upon it, and returned, you said you went to Kinkaid's office to get the papers drawn up? A. Yes, sir.

Q. And you went there you said at the suggestion of Mr. Humphrey? A. Yes, sir.

Q. Up to that time Mr. Humphrey hadn't told you you was to be paid \$100 or any other sum?

A. Not directly.

Q. Had you had any talk with him on the subject?

A. Not directly, only through Thompson.

Q. Had Thompson told you?

A. Thompson told me I would probably get \$250 or \$300.

Q. Did he mention anybody?

(Testimony of Benjamin R. Allen.)

A. He didn't mention anybody.

Q. You didn't have any arrangement with Humphrey as to how much you would be paid at the time you made your application?

A. No definite arrangements.

Q. And you didn't have any indefinite arrangement except the one implied from your talks with Thompson?

A. That is all.

Q. Isn't it true, Mr. Allen, that after you found this money was furnished to you and after you had this later talk with Humphrey that then you began to think you had been under an agreed contract all the time with Humphrey, growing out of the fact that he furnished you the money?

A. Yes, sir.

Q. What makes you now think that you entered this land under an agreement is the fact that he furnished the money and it was subsequently turned over to him?

A. Yes, sir.

Q. There wasn't anything said either by you or Mr. Humphrey or by Mr. Thompson for Humphrey making a definite agreement before the time you filed this first paper as to what you should do with the land?

A. No, sir.

Q. That agreement arose after you had made your filing and didn't have money enough to make final proof, isn't that true?

A. Yes, sir.

Q. So that at the time you made this first filing, original application, you hadn't learned exactly how the easy money you were expecting was going to be made?

A. Not exactly, no.

(Testimony of Benjamin R. Allen.)

Q. Your understanding at that time was that the profit you would get, I think you said, would depend on the value of the claim you got?

A. Yes, sir.

Q. If you got a very good claim you would make a larger profit than if you got a poor claim; that was the understanding, wasn't it? A. Yes, sir.

Q. So that your evidence as you desire to be understood is, I think, Mr. Allen, that at the time you made this first application to purchase you had no arrangement or agreement with Thompson or Humphrey, or with any of the gentlemen I have named, as to how much you was to get out of the land or what you should do with it?

A. No, no definite arrangement.

Q. What you have testified to here is what you have learned since making that filing, based on what you did in fact receive and the way it was handled?

A. Yes, sir.

Q. So that at the time you went before the land office and made this first statement, on August 10, 1903, up to that time you had not made any agreement or contract with any person by which the title you might acquire from the Government would inure in whole or in part to the benefit of any person except yourself. That was in fact true, wasn't it? A. Yes, sir.

Q. And the interest or right which Mr. Humphrey finally acquired in your land was all acquired after you had made this original filing?

A. Practically, yes.

(Testimony of Benjamin R. Allen.)

Q. Up to that time you were under no obligation to Mr. Humphrey or anybody else, at the time you filed your first paper? A. No.

Q. But subsequent to that, having taken his money to prove up on you felt under obligation to deed it to him, and did deed it to him, in consideration of \$100. Is that right? A. Yes, sir.

Mr. FRASER.—He didn't sell it to Humphrey; he was the agent.

Mr. BUNDY.—As I understand it, \$100 was all he got from Humphrey.

Mr. FRASER.—Q. Mr. Humphrey acted practically as an agent for you in the sale of this claim, didn't he? A. Yes, sir.

Q. You didn't sell it to Humphrey?

A. No, sir.

Q. He went out and found you a purchaser?

A. I didn't know; he looked for a purchaser, though.

Q. Didn't he come back and tell you they would only offer you \$100 for the claim, that that was as much as he could get for it?

A. I spoke to him about the amount of money and he told me there that he didn't think they would stand more than \$100.

Q. Then you knew he wasn't buying the claim?

A. Yes, sir, I knew by that.

Q. And you didn't sell it to Humphrey?

A. No.

(Witness excused.)

Mr. FRASER.—Counsel for the defendant move

(Testimony of Benjamin R. Allen.)

to strike out, in addition to the general motion to strike applying to this testimony, the testimony of the witness Allen as to any and all conversations had with Sherman Thompson as incompetent, irrelevant and immaterial, not tending to prove any of the allegations of the bill of complaint, and as hearsay evidence, said Sherman Thompson not being mentioned in the bill of complaint as a party to the fraud, if any, which was committed in the acquisition of this timber land or any part of it.

Mr. GORDON.—The Government makes the same reply as has been heretofore made to the same objections.

[Testimony of Henry T. James, on Behalf of the Complainant.]

HENRY T. JAMES, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. James, what is your address; where do you live?

A. 1718 North Ninth Street, Boise.

Q. How long have you lived in Boise, Idaho?

A. Close to nine years.

Q. What was your occupation in May, 1902?

A. Driving a dray.

Mr. BUNDY.—Give us the description of this man's entry as soon as you can, so that I can make the proper objection.

Mr. GORDON.—Q. I will ask you, Mr. James,

(Testimony of Henry T. James.)

if you made a timber and stone entry May 5, 1902, and if that is your signature to the sworn statement you filed in the land office (showing witness paper) ?

A. Yes, sir.

Mr. GORDON.—That is the southeast quarter of section 13, township 7 north of range 5 east, Boise Meridian.

Mr. BUNDY.—We object to the introduction of any evidence of Mr. James or any other person relative to the entry of the southeast quarter of section 13, township 7 north of range 5 east, for the reason that said lands are not involved in this action, not mentioned in the bill of complaint, and no charge is made in this action that said lands were procured in violation of any law.

Mr. GORDON.—I don't know whether I heard your answer as to what your occupation was in 1902.

The WITNESS.—I was driving a dray.

Q. What is your occupation now ?

A. Brick maker.

Q. Who was the first person that spoke with you about taking up a claim under the Timber and Stone Act ?

A. Why, directly—I had heard of it indirectly on the street, a conversation with J. G. McDonald was the first one that spoke to me about it, I believe.

Q. Did you talk with Mr. Pearson about it ?

A. No, sir.

Q. Had you heard indirectly from Mr. Pearson about it ?

A. Only inasmuch as Mr. McDonald had men-

(Testimony of Henry T. James.)

tioned Mr. Pearson's name in some connection.

Q. Well, state what was said about the taking up of one of these claims as well as you can remember.

A. As near as I can remember, Mr. McDonald told me—

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and as calling for hearsay evidence.

A. (Continuing.) —several people were locating timber claims in the Basin, and that they would soon be valuable and there would be a chance to sell them.

Q. Was that the expression he used?

A. I don't know as it was the exact words, but that is as near as I can remember.

Q. Did you meet Mr. John I. Wells shortly after that?

A. I don't know for sure when I did meet Mr. Wells first. I think it was after we had located, although I am not certain about it. I think it was after we went up there and located on the timber land. I might have seen him before I went up, and the more I think of it I have about come to the conclusion that I didn't see him until afterwards.

Q. Did you go up to look at this land?

A. Yes, sir.

Q. Did you go alone or with a party?

A. There was a party of four.

Q. Who was in the party?

A. Mr. and Mrs. Arbuckle, Mr. McDonald and myself.

Q. Was Mr. Pearson with that party?

(Testimony of Henry T. James.)

A. No, sir.

Q. Where did you start from?

A. We started—Mr. McDonald and I started from the Ransome corral, got the team there, and as near as I can remember we picked Mr. and Mrs. Arbuckle up at their residence, I think; I am not certain about that.

Q. Who arranged for the party?

A. I think Mr. Pearson did.

Q. Mr. William Pearson?

A. I don't know his first name.

Q. Did he come to see you about going?

A. No, sir.

Q. And how long before you started were you notified that the party was going?

A. I think it was the day, or maybe two days before, a short time.

Q. And you went up to look at this land?

A. Yes, sir.

Q. Was there anyone there that you understood you would meet to locate you?

A. I understood there would be someone there; we met Mr. Downs when we got there.

Q. And he located you? A. Yes, sir.

Q. Did he locate you on any particular piece, or did he show you over a number and ask you which piece you would rather have?

A. I went over the whole four claims with him, and as near as I can remember he said one was about as good as the other.

Q. And did he give you a description of your

(Testimony of Henry T. James.)

claim?

A. I am under the impression that he gave one of us a description of the whole four claims.

Q. Do you know which one it was that he gave that description to?

A. No, sir, I don't remember.

Q. How did you get your description from the party that had it?

A. At Mr. Wells' office.

Q. And did you pay Mr. Downs for locating you?

A. I paid either Mr. Downs or Mr. Wells, I don't know which one.

Q. Do you remember which one now?

A. No, I don't.

Q. Do you know how much it was?

A. Twenty-five dollars, I believe.

Q. And when you returned; did you go to Mr. Wells' office the day you returned, or how soon afterwards?

A. I think it was the next day.

Q. And were your papers prepared there, your filing papers?

A. I think they were.

Q. Do you know whether or not Mr. Wells prepared the entry papers which you filed?

A. I am not certain about it, but I think he did.

Q. Then you went to the land office?

A. Yes, sir.

Q. Now, were those papers at Wells' office already prepared when you arrived there?

A. I couldn't say.

Q. What is your best recollection?

A. Well, I don't know whether I sat down there and waited for him to make them out or if he had

(Testimony of Henry T. James.)

them ready; I couldn't say.

Q. Did anyone notify you when the time came to prove up?

A. I got a notice from the land office, I think.

Q. Did Mr. Wells notify you?

A. I don't think so.

Q. When you went to prove up where did you get the money that you used at the land office?

A. Part of it I had and I borrowed some.

Q. Did you get any from Mr. Wells?

A. Yes, sir.

Q. How much?

A. I don't recall how much I got from him.

Q. As near as you can remember.

A. I couldn't say; I might have got \$200 or I might have got \$400; I couldn't say now, but I had some money I got from another party.

Q. Do you know who the other party was?

A. Mr. Warburg, my employer.

Q. Do you remember how much you borrowed from Mr. Warburg?

A. I am not certain; I think it was about \$200 I got from him.

Q. When you went to Mr. Wells to get this money—or did Mr. Wells come to see you?

A. I met him on the street in front of his office a short time before I proved up, and he said he supposed I would be ready to prove up soon, and asked me in regard to the money, asked me if I had enough, and he told me if I needed the money he would loan it to me.

(Testimony of Henry T. James.)

Q. Did you get the money at that time or later?

A. Later on.

Q. Did you give him a note for it?

A. Yes, sir.

Q. How long was that note to run?

A. I am not certain about it; I think it was thirty days.

Q. Did it bear interest?

A. I have that impression now, that it did.

Q. How long was it after that that you sold your property, if you sold at all?

A. Two or three, maybe three or four days; it was a short time after I got my final receipt.

Q. To whom did you sell?

A. Why, Mr. Pritchard was the man that transacted the business.

Q. How did you get around Mr. Pritchard, do you remember?

A. I got a letter from Mr. Pritchard stating that he had the information that I had my final receipt and that he was buying timber claims, and to call and see him.

Q. Have you that letter?

A. I think I destroyed it.

Q. Then you went to see Mr. Pritchard?

A. Yes, sir.

Q. And sold while you were there?

A. Yes, sir.

Q. How much money did Mr. Pritchard give you?

A. I am not certain of the amount; he kept out

(Testimony of Henry T. James.)

what I borrowed from Mr. Wells.

Q. Was Mr. Wells there at that time?

A. I am not certain—I think likely he was.

Q. Was the deed made out when you got to Mr. Pritchard's office?

A. I am not certain about it, whether it was or not.

Q. Now, had you had any business dealings with Mr. Wells before the transactions you have related with reference to this property?

A. No, sir.

Q. That is the only business relation you ever had with him?

A. Yes, sir.

Q. Had you ever known Mr. Pritchard before?

A. No, sir.

Q. And was there any discussion about this property, the price of this property, when you went to Mr. Pritchard's office?

A. Yes, sir.

Q. State what that was.

A. He made me an offer and it wasn't enough, and I told him I thought I ought to have more.

Q. How much did he offer you?

A. I am not certain as to the amount, but I think it was \$750 for the claim.

Q. How much did you get?

A. I think that is what he paid me. I am not certain about it, but I said I wanted more.

Q. Do you remember how much money you got the day you were at his office?

A. No, sir, I don't.

Q. Have you any recollection of approximately how much it was?

(Testimony of Henry T. James.)

A. No, I haven't. I think I cleared about \$250 on the claim, something like that, \$250 or \$300.

Q. Did I understand you to say he kept out the money you got from Wells? A. Yes, sir.

Q. Do you know whether this deed was made out in blank (showing witness deed)?

A. I think it was.

Q. In other words, it didn't have the names in it and the dates, when you made it?

A. I don't think so.

Q. And you didn't know who you were selling to other than that you were dealing for the sale of it and got your money from Mr. Pritchard? Is that right? A. Yes, sir.

Q. Do you know whether the consideration was in the deed?

A. I believe the consideration was \$1,000.

Q. Were you afterward asked to make any other deed? A. No, sir.

Q. Was this money given in check or in cash?

A. Cash, I think. I am not certain about it.

Q. You were unmarried at this time?

A. Yes, sir.

Q. You never took up any other claim but the one referred to here, did you?

A. That is the only one.

Q. I will ask you if this is your signature, Henry T. James, to the testimony of claimant given at the land office, dated July 24, 1902? (Showing witness paper.) A. Yes, sir, that is mine.

Mr. GORDON.—We offer in evidence the sworn

(Testimony of Henry T. James.)

statement of Mr. Henry T. James, dated May 5, 1902, the testimony of Mr. James taken before the land office, dated July 24, 1902, and the cross-examination and the proof papers, the register's and receiver's certificates dated July 24, 1902.

Mr. GORDON.—I will ask you, Mr. James, if that is your signature to the deed, dated July 26, 1902, which you have referred to in your testimony?

A. Yes, sir.

Mr. GORDON.—We offer the deed of Mr. James, just identified by him, all of these exhibits relating to the southeast quarter of section 13, township 7 north of range 5 east, Boise Meridian.

(James papers marked Plaintiff's Exhibit No. 32A to 32H, inclusive.)

Mr. FRASER.—To the introduction of each and all of these exhibits counsel for the defendants object, in addition to the general objection already made, that the lands described in the application and entry, final proof, and other documents of the witness James, are not mentioned in the bill of complaint, nor is it charged therein that any of these defendants ever acquired title to the lands mentioned in the application and entry of the witness.

Cross-examination.

(By Mr. FRASER.)

Q. You stated, Mr. James, that Mr. McDonald was the first one that spoke to you about this land?

A. Yes, sir.

Q. You had heard it discussed incidentally by a number of people that there was land to be taken

(Testimony of Henry T. James.)

by anybody that wished to exercise his right to file on a claim? A. Yes, sir.

Q. And Mr. McDonald told you that there was some parties going up?

A. Yes, it seems that Mr. Pearson was working for Mr. McDonald and mentioned the fact.

Q. And you finally went up and looked at a piece of land? A. Yes, sir.

Q. You came back to Boise City and went to the land office and made your application to purchase a timber claim? A. Yes, sir.

Q. Who else had talked to you at the time you filed your first application outside of McDonald and Pearson about it?

A. Just McDonald; Pearson hadn't talked to me.

Q. When did you first see John L. Wells?

A. I think it was when I first came back. I think Mr. Downs told us to go to Mr. Wells' office.

Q. I understand you paid \$25 location fee. Do you remember whether you paid it to Mr. Wells or Mr. Downs? A. I don't remember.

Q. Do you remember whether you paid it before or after you filed? A. Before I filed, I think.

Q. Up to the time you filed this first paper in the land office had anybody talked to you about buying this land? A. No, sir.

Q. Had you talked to anybody trying to sell it before you made entry? A. No, I suppose not.

Q. I notice in Plaintiff's Exhibit 32A, I call your attention—is that your signature?

A. Yes, sir.

(Testimony of Henry T. James.)

Q. That is the first paper you filed in the land office? A. Yes, sir.

Q. And in this paper I find you say that "I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true when you made it, was it not? A. Yes, sir, it was.

Q. That statement was correct?

A. Yes, sir.

Q. You never made any agreement to sell it to anybody until after you got your final proof?

A. No, sir.

Q. Up to the time you proved up there was no person, corporation or association that you had entered into any contract or agreement with by which they were to have any interest in this land?

A. No, sir.

Q. And the first intimation you had was this letter you received from Pritchard?

A. That is right.

Q. And after you received this letter you tried to negotiate a sale? A. Yes, sir.

Q. And after you negotiated awhile you finally disposed of it? A. Yes, sir.

Q. Did you care who you were selling it to?

(Testimony of Henry T. James.)

A. No, sir, not so long as I got my money.

Q. You had made no contract before you proved up to sell it to anybody? A. No, sir.

Q. And after you proved up you didn't care who you sold it to as long as you got your price, did you?

A. No, sir.

Q. In this bill of complaint, Mr. James, in this action which we are trying now, they charge in effect that you, together with other persons, entered into a contract or agreement before you entered this land at the land office by which you agreed to transfer the title which you might receive for this land to the Barber Lumber Company or to Mr. Barber, Mr. Moon, Mr. Kinkaid, Mr. Palmer, Mr. Rand, or some of the defendants. Is that allegation true or false?

A. It is false.

Q. You never had made any such agreement?

A. No, sir.

Q. Did you know any of these people? Did you know any of them at all that I have mentioned?

A. Well, Wells, Downs and Pritchard I had met.

Q. Your whole acquaintance with them was a casual acquaintance? A. Yes, sir.

Q. So that the allegation that you had entered into a scheme or entered into any contract or agreement by which the title you were to receive was to inure to these parties, was false, was it not?

A. Yes, sir.

(Witness excused.)

[Testimony of Joseph M. Hollister, on Behalf of the Complainant.]

JOSEPH M. HOLLISTER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Joseph H. Hollister?

A. Yes, sir.

Q. Where do you reside, Mr. Hollister?

A. In Boise.

Q. How long have you resided in Boise?

A. Twenty-five years.

Q. What is your business now, your occupation?

A. I am secretary of a building and loan association.

Q. What was it in October, 1901?

A. I was assessor of this county.

Q. You took up some land under the Timber and Stone Act in 1901, did you? A. I did.

Q. I show you timber and stone land sworn statement, dated October 26, 1901, and ask you if that is your signature to the sworn statement?

A. Yes, sir.

Q. I show you the testimony of Joseph M. Hollister, before the land office, dated January 21, 1902, and ask you if you signed that?

A. That is my signature, yes, sir.

Q. Who was the first person that you remember that spoke with you about taking up a timber claim?

(Testimony of Joseph M. Hollister.)

A. I heard some men talking in my office of parties locating on timber land, and I ascertained who the locators were and went to them.

Q. Who was the locator you went to?

A. Snow.

Q. Henry A. Snow?

A. I don't know his initials.

Q. Do you know where he was from?

A. Somewheres in the east, I don't know now where.

Q. What was said between you and Mr. Snow about locating?

A. I engaged him to locate me on some timber land, and my wife with me. Both of these locations—I did all the detail work in connection with the claims so it may be understood that the two were as one.

Q. Do you know whether you paid Mr. Snow a location fee? A. Yes.

Q. How much? A. \$25 apiece.

Q. Did you and Mr. Snow go up or were there others?

A. There were Mr. and Mrs. Snow, my wife and I, and a man by the name of Ballantine, and there was another, I don't know his name, a stranger, I never did.

Q. Who located you? A. Snow.

Q. Did he give you a description of the land?

A. Why, I can't remember that now. He had a plot right with him, and he had the description; I think I took the description of the land I located on

(Testimony of Joseph M. Hollister.)

on a piece of paper and had it with me, and also the description of the land my wife located on, I think I took it on a piece of paper off the plot.

Q. Have you ever met John I. Wells?

A. I have met him; yes, sir.

Q. Did you meet him in connection with this timber claim?

A. No, not until after I had located and taken up the claim, then I met him.

Q. Now, did Mr. Snow or Mr. Downs give you to understand you could sell these claims?

Mr. FRASER.—I object to that as calling for a conclusion of the witness, and not asking for any fact.

A. I heard talk from different ones.

Q. I am asking about these two gentlemen, Mr. Downs and Mr. Snow?

A. I can't remember that the question was ever talked over or not; there was a good deal of talk about timber, but I can't remember, it is too long a time ago.

Q. Did you have in mind when you made your entry the selling or conveying this property to any particular person or to any corporation?

A. No, sir.

Q. Did you know that there was any particular person or corporation that was buying this land at that time?

A. I did afterwards; not at the time I filed on it.

Q. How long after you filed did you learn that?

(Testimony of Joseph M. Hollister.)

A. I can't remember the exact time.

Q. Who did you learn it from?

A. From different ones; I learned it from Wells; I learned it from different ones that located.

Q. After you filed did Mr. Wells tell you that your claim was worth a certain amount of money over and above what it cost you?

A. No, sir, not that I remember of, not at that time.

Q. Did Mr. Wells tell you that the claim was worth and would bring \$300 more than you paid for it?

A. I don't remember of his telling me that. We were talking about the value of the claims. One man presumed it was worth \$1,000 and another one \$800; but I don't remember who it was that talked about it.

Q. Then, you went and made your final proof?

A. Yes, sir.

Q. Did you borrow the money with which you made your final proof?

A. No, sir.

Q. You used your own money?

A. Yes, sir.

Q. And that day that you paid your money in the land office did you see someone with reference to selling it?

A. No, sir.

Q. The day that you made final proof, did you?

A. No, it was after that.

Q. How long after that?

A. I don't remember; a few days probably.

Q. Then whom did you see?

(Testimony of Joseph M. Hollister.)

A. I saw—I can't think of the name.

Q. Was it Mr. Pritchard?

A. Pritchard was the name, yes.

Q. Who told you to go to see Mr. Pritchard?

A. I had a letter from somebody in the east asking me if the land was for sale, and if so that I could call on Mr. Pritchard.

Q. Do you remember who that letter was from?

A. No, I have heard the name in connection with some of the eastern parties interested in the case, but I can't recall it.

Q. Have you that letter? How far east was it the letter came from? Do you remember the State?

A. I think the name of the party is mentioned in the complaint, but I can't recall it now.

Q. Can you remember the town it came from?

A. No, sir.

Q. Do you remember the State?

A. Minnesota, I believe, or Wisconsin.

Q. And was there any offer made as to the—

A. (Interrupting.) Not in that letter, no, sir, no price.

Q. And you went to see Mr. Pritchard?

A. Yes, sir.

Q. Was it the Barber Lumber Company, or a man named Barber, or Moon, Kinkaid, Sweet, Downs, Palmer—

A. Palmer, that is the name.

Q. A. E. Palmer?

A. That is the name; that is who I sold it to; that is the man's name that is in the deed.

(Testimony of Joseph M. Hollister.)

Q. And you went to see Mr. Pritchard about it the day you got that letter?

A. Soon after that; I don't know whether I did the day I got it.

Q. And you sold to Mr. Pritchard?

A. I sold—

Q. I mean did you conduct your negotiations with Mr. Pritchard? A. Yes.

Q. And how much cash money did he give you?

A. It was in the neighborhood of \$800, something like that.

Q. For the two claims?

A. No, \$800 a claim.

Q. I am asking how much cash he gave you?

A. That is what I am telling you.

Q. Mr. Hollister, may I ask you if you made a statement in April, 1907, before the United States Attorney and one of his assistants?

Mr. FRASER.—Let the witness look at the statement.

Mr. GORDON.—I don't know whether it is or not. I don't know whether he made any statement. (To the witness.) I ask you to read that statement over, and ask you if you made that statement in answer to questions asked you (hands witness paper)? I want to refresh the witness' recollection.

A. I made that statement, yes, sir.

Q. Did you read it all through?

A. I didn't read it all through. I didn't read it carefully. There may be some statements there that I may have answered different. It is practi-

(Testimony of Joseph M. Hollister.)

cally true, I think.

Q. Were you asked this question, Mr. Hollister?
Before whom did you make this statement?

A. I think it was Assistant District Attorney Johnson.

Q. And in the courthouse here?

A. It was in a room in the building.

Q. In this building? A. Yes, sir.

Q. And on April 7, 1907?

A. Yes, sir. I was not under oath at the time I made the statement. It was simply a statement as conversation.

Q. We are not suggesting that you made any mistake at all.

A. I wanted to explain just how it was.

Q. I just want to get at your best recollection. I know this has been a number of years ago.

A. What I wanted to explain was that I wasn't under oath at the time, and I wasn't guarded, and what I would testify to now probably wouldn't be the same as there, because I wasn't guarded.

Q. I will ask you if this question was asked you, and whether you made the answer which I shall read: "Q. Who was it that gave you to understand that you could transfer this claim and get in the neighborhood of \$300 for it? A. Why, Snow and Downs and Wells." Did you make that answer?

A. I presume I did; if it is there I presume I made it.

Q. I will ask you if you were asked this question: "Q. How were you paid by Pritchard? A. I was

(Testimony of Joseph M. Hollister.)

paid in cash."

A. Yes, sir.

Q. How much were you paid?

A. Well, sir, I can't tell just exactly now how much I realized from it, less the commission. I couldn't tell you; I couldn't remember just exactly the amount I got, less the commission.

Q. Do you remember that? A. Yes.

Q. Did you get a little over \$200 a claim?

A. I think, if I remember right, it was a little over \$250.

Q. Is that right?

A. That meant over the cost of the claim.

Q. After taking the amount you paid out?

A. Yes, sir, something like that.

Q. Was this question asked you: "Q. Do you recall, did they pay you \$500, were you handed \$500 in cash, or more or less by Mr. Pritchard? A. Well, sir, I can't remember just how much was taken out." Do you remember that? A. Yes, sir.

Q. Did you make that answer to that question?

A. I think I did; I can't remember now.

Q. Was this question asked you: "Q. Who was it that directed you to go to Pritchard, was it Wells? Did he tell you when you got your final receipt to take it to Pritchard and he would pay you off and give you your money? A. I think so; I will not be positive in regard to that; I think he told me to go there."

Mr. FRASER.—We object to that as incompetent, irrelevant and immaterial, as tending to im-

(Testimony of Joseph M. Hollister.)

peach their own witness, and move to strike out all the questions and answers relative to this statement introduced here, as the introduction of the same was for the purpose of impeaching their own witness.

Mr. KEIGWIN.—Counsel for the Government disclaim any intention of impeaching their own witness, and deny that it is for the purpose of impeaching and merely for the purpose of refreshing his memory.

Mr. FRASER.—I still object to it as not being a document made at the time of the transaction, not in court, and not under oath.

Q. I will ask you if this question was asked you: “Q. Who was it that directed you to go to Pritchard, was it Wells, did he tell you when you got your final receipt to take it to Pritchard and he would pay you off and give you your money? A. I think so; I will not be positive in regard to that; I think he told me to go there.” Is that right?

A. I don’t know whether I made that statement—

Q. Is it correct or not?

A. No, that is not true as I remember now. I got a letter as I stated and that is true.

Q. Then you made a deed there that day that you got your money? A. Yes.

Q. Was the deed prepared when you got to Mr. Pritchard’s office?

A. I don’t know. I think that day that I went there the understanding was that the deed would be made up, and I think the next day, anyway in a day or two after, he went down to the house and got my

(Testimony of Joseph M. Hollister.)

wife to sign and acknowledge it. She wasn't well enough to go to the office. He went down to my house and she signed and acknowledged it.

Q. Mr. Hollister, do you remember the date that deed bore? A. No, I don't.

Q. Were you ever requested to make any other deed? A. No, sir.

Q. And this deed that you signed, how many days, to your best recollection, was it after you made your final proof.

A. I don't know. I can't recall.

Q. As near as you can remember. Was it one day?

A. I presume it was a week or ten days. I don't know. I can't remember.

Q. Is that your signature to the deed?

A. Yes, sir.

Q. And that is the signature of your wife?

A. Yes.

Mr. GORDON.—We offer in evidence the sworn statement of Mr. Hollister, dated October 26, 1901, his testimony before the land office, dated January 21, 1902, the cross-examination thereto, the certificates of the register and receiver of the land office, dated July 25, 1902, the deed, dated June 23, 1903, made by Joseph M. Hollister and Leonora Hollister, his wife, to A. E. Palmer, consideration \$2,000.

Mr. BUNDY.—That embraces both tracts?

Mr. GORDON.—Yes, sir, to the southeast quarter of section 7, and the north half of the northeast quarter, the southwest quarter of the northeast quarter,

(Testimony of Joseph M. Hollister.)

and the northwest quarter of the southeast quarter of section 18, township 7 north of range 5 east, Boise Meridian.

Mr. BUNDY.—You didn't read that right. The first southeast quarter is in another section.

Mr. GORDON.—Section 7.

Mr. BUNDY.—All right, section 7. The balance section 18.

Mr. GORDON.—And the patent.

(Joseph M. Hollister papers marked Plaintiff's Exhibit No. 33A to 33S inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Hollister, as I understand it, no one came to you and suggested that you go and take a timber and stone claim? A. No, sir.

Q. You simply knew there was land there which could be acquired by exercising your rights, and of your own notion employed a locator to locate you and your wife on suitable tracts?

A. Yes, sir.

Q. And for the purpose of being located you employed a man by the name of Snow for that purpose. You paid Snow yourself? A. Yes.

Q. And he located you as your employee?

A. He did, yes, sir.

Q. And you paid him for it? A. Yes, sir.

Q. After you were located up in the country there and certain descriptions furnished you you came down to Boise, I assume? A. Yes, sir.

Q. And had the necessary papers made out for

(Testimony of Joseph M. Hollister.)

filing? A. Made them out myself.

Q. For yourself and your wife?

A. Yes, sir.

Q. And with those papers went to the land office to make your original application?

A. Yes, sir.

Q. At the time of making that application, the first paper you were called upon to file, the one I show you, dated October 26, 1901, signed by yourself?

A. Yes, sir.

Q. And in that statement, signed and filed by yourself, you said, among other things: "I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was absolutely true at that time, was it not? A. Yes, sir.

Q. And at that time no person, firm or corporation, had any interest in it whatever?

A. No, sir.

Q. And the same thing was true up till after the time you had made your final proof and been given the final receiver's receipt, was it not?

A. Yes, sir.

Q. So that at the time the final receipt was issued you had no agreement, express or implied, oral or in writing, with any person by which they had acquired any interest in the land or the timber on the land. Isn't that right? A. Yes, sir.

(Testimony of Joseph M. Hollister.)

Q. You paid your own money for the land and sold it to whoever would pay you the most for it?

A. Yes, sir.

Q. It is alleged, Mr. Hollister, in this bill of complaint, in this case we are trying now, that you made your timber and stone entry pursuant to an agreement entered into by and between yourself and the Barber Lumber Company, Mr. Barber, Mr. Moon, Mr. Kinkaid, and a lot of other fellows, by which you had agreed to turn this land over to them or to such person as they should direct after you had acquired title. I will ask you the straight question as to whether that allegation as far as you are concerned is true or false?

A. It is false.

Q. There is one matter in your evidence that I want to ask you about, for I think you must be mistaken with reference to receiving a letter from Mr. A. E. Palmer. Mr. Palmer resided at that time, I suppose you understand, at Spokane, Washington?

A. It might have been a mistake. It was somebody.

Q. Isn't it true, Mr. Hollister, that the letter was from someone saying that Mr. Palmer was buying land—

A. That might be—the letter is gone and I didn't have it only three or four days.

Q. You are not at all certain that you received a letter signed by Mr. Palmer, are you?

A. I know I had a letter from somebody, and in that letter—it was either signed by Palmer or his

(Testimony of Joseph M. Hollister.)

name was mentioned in it. I can't swear to the positive fact. It might have been some of those other names mentioned in there, but it was a letter from someone in the east.

Q. I think it appears from the evidence already in that deeds were being taken for Mr. Palmer, and he was the only purchaser that has developed here, at least that was in the market at that time. Now, wasn't the letter in substance that if you desired to sell, Mr. Palmer was buying and to see Mr. Pritchard about it?

A. I merely said I thought the letter was from him because he was an interested party, and it was either from him or his name was mentioned.

Q. I think you are in error about receiving it from him in the east, because he was in Spokane at that time. Your attention has been called to some statements which it is claimed you made in the sweat-box here in April, 1907.

Mr. KEIGWIN.—There has been no statement made that any statements were made by this witness in any sweat-box, and no statement made which would warrant—

Mr. BUNDY.—(Interrupting.) I don't wish to take issue with you here, but it is a matter of record here. I don't care about calling it the sweat-box. We won't call it the sweat-box; we will call it the district attorney's parlor. (To the witness.) You have been referred to some statements you made in the parlor of the district attorney, in the presence of the district attorney, some of which would seem to not

(Testimony of Joseph M. Hollister.)

perhaps conflict but to differ to some extent from your evidence here to-day. I will ask you whether your evidence here to-day is the best evidence at this time after mature deliberation?

A. I am not clear on that proposition. I will explain my understanding of the conversation I had with Johnson. He told me, "You are not before the Grand Jury; you and I are talking. Now, tell me as near as you can what you remember." I wasn't particular in answering, and gave a rough statement generally.

Q. But your evidence on the stand to-day is the result of mature and careful deliberation?

A. I think it has been careful. I knew at that time it didn't matter what I said.

Q. Your evidence to-day is the best of your recollection?

A. Yes, sir.

Q. And if that statement conflicts in any manner with it, the statement is wrong?

A. Yes, sir, the statement is wrong.

(Witness excused.)

[Testimony of Margaret Pearson, on Behalf of the Complainant.]

MARGARET PEARSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Margaret Pearson?

A. Yes.

Q. And you are the wife of William Pearson?

(Testimony of Margaret Pearson.)

A. Yes.

Q. Where do you live, Mrs. Pearson?

A. At present I live about half a mile from Ustick.

Q. Where did you live in 1901, in December?

A. I lived at 612 South 14th Street, Boise.

Q. Did you take up a claim under the Timber and Stone Act in December, 1901? A. Yes.

Q. I will ask you if that is your signature to timber and stone land sworn statement dated December 7, 1901? A. Yes.

Q. What is your husband's occupation?

A. Painter.

Q. What was his occupation in December, 1901?

A. Painter.

Q. Was he working at his trade at that time?

A. Yes.

Q. Were you born in this country, Mrs. Pearson?

A. No.

Q. How long had you been in this country when you took up a timber and stone claim?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and not tending to establish any of the allegations of the bill.

A. One month.

Q. Who first spoke with you about taking up a timber and stone claim? A. My husband.

Q. What did your husband say to you about it?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial; asking the witness to testify to hearsay evidence.

(Testimony of Margaret Pearson.)

A. He told me there was a law of this country that you could take up 160 acres of timber land, file on it, prove up on it, and sell it.

Q. Did you have any money at that time with which to buy timber land?

A. No, I hadn't any to buy it at that time.

Q. Did you understand before you filed where you were to get the money?

A. No, I understood I could borrow the money, but I didn't know from who.

Q. Who told you that?

A. My husband.

Q. You went up to look at this land?

A. Yes.

Q. And who went with you?

A. Sam Gregg, Mrs. Gregg, Pat Downs and a man by the name of Walker.

Q. And who located you?

A. Patrick Downs.

Q. Had you ever met Mr. Downs before?

A. No.

Q. And did either you or your husband pay a location fee?

A. Yes, my husband paid it for me.

Q. Where did he pay it, who to?

Q. I don't just know whether he paid it, but I think he paid it to Pat Downs, either Pat Downs or John Wells, I am not sure which.

Q. And did Mr. Downs take you out and show you a piece of property that you were to locate on?

A. Yes.

(Testimony of Margaret Pearson.)

Q. Who made out the first papers you filed in the land office? A. Mr. West.

Q. Mr. Dean West? A. Yes.

Q. Was Mr. West a neighbor of yours?

A. We were rooming right in his house.

Q. Rooming in Mr. Dean West's house?

A. Yes.

Q. Did you have to pay any money at the land office when you got there?

A. Yes, I paid \$7.50.

Q. And where did you get that?

A. I had it of my own.

Q. Do you know John I. Wells?

A. Yes, I know him.

Q. When did you meet him?

A. Well, the first time I saw him was the day I proved up, but I didn't have any conversation with him.

Q. Where did you see him?

A. I saw him in the land office; he was one of our witnesses.

Q. You said he was one of your witnesses?

A. Yes.

Q. And how did you come to put his name in as one of your witnesses?

A. Well, I don't know; I suppose it was my husband arranged that for me.

Q. Who arranged the party that you went up with?

A. As near as I can recollect it was a man by the name of Charles Nelson.

(Testimony of Margaret Pearson.)

Q. And where did you start from in Boise?

A. From the Pacific Hotel.

Q. Did you wait on the street for the wagon to come or was it there when you got there?

A. It wasn't there, and I went in and sat in the office until it came.

Q. Now, where did you get the money with which you made your final proof?

A. I got it in the front room, in my front room.

Q. In the room where you lived? A. Yes.

Q. State what occurred.

A. I was in talking with Mr. Dean West's wife, and he came in and told me I would find something I was looking for.

Q. And what were you looking for at that time?

A. I was expecting to borrow money to prove up with.

Q. Had you been given to understand that you could get that to prove up with?

A. Yes, I understood it could be borrowed.

Q. Who told you you could get it?

A. My husband.

Q. Did he tell you who you could get it from?

A. No.

Q. Did you go to your room and look around?

A. Yes.

Q. What did you find? A. I found \$412.75.

Q. Where did you find it?

A. Right on the counterpane of the bed.

Q. And did anyone talk with you about buying this property?

(Testimony of Margaret Pearson.)

A. I had a letter from a man in Placerville about this property.

Q. Do you know who the man was?

A. A man named Morgan.

Q. Did you sell to Mr. Morgan? A. No.

Q. Who did you sell to?

A. I finally sold to Mr. Pritchard.

Q. What was the occasion of your going to see Mr. Pritchard?

A. Well, I didn't sell to Mr. Morgan; he was the only other party I knew that was buying land.

Q. What did Mr. Morgan say about buying land?

A. He wrote me a letter and said he understood there was another company buying lands that would give seven or eight hundred, and he wrote and asked how much I would take, and I wrote him a letter and told him I understood it was against the law to bargain away your land until you had your final receipt, and if he would write me again I might talk business.

Q. Who told you to go to see Mr. Pritchard? Did he write you a letter?

A. No, I had already been up with my husband's receipt.

Q. Where did you go to sign your husband's receipt? A. Mr. Pritchard's office.

Q. That was before you sold yours?

A. Yes, sir.

Q. Was that when your husband gave his receipt to Mr. Pritchard? A. Yes.

Q. Did Mr. Pritchard give him any money then?

(Testimony of Margaret Pearson.)

A. Well, I can't remember how much he got, but I think it was somewhere in the neighborhood of \$250.

Q. Did you sign a deed there that day?

A. Yes, sir.

Q. Was the deed dated, were the names in it?

A. I don't recollect that.

Q. Did you ever sign any other deed?

A. I signed a deed when I sold my own.

Q. Was that the same deed you signed with your husband?

A. I couldn't say that it was.

Q. Did you sign two deeds that you remember of?

A. Yes, of course I signed a deed with him and then I signed another deed.

Q. Who told you to go to see Mr. Pritchard?

A. Mr. Wells, I think.

Q. Mr. John I. Wells?

A. Yes.

Q. Where did you meet him?

A. After I got my final receipt I went up and saw Mr. Wells in his office.

Q. Why did you go to see Mr. Wells?

A. Because at this time I understood I had got this money from Mr. Wells.

Q. And you understood when you accepted that money that you were to convey to him or to whoever he told you?

A. No, I did not. When I got that money I understood it was to prove up with.

Q. You didn't give any note for it?

(Testimony of Margaret Pearson.)

A. Not at that time.

Q. Did you any time? A. Yes.

Q. When?

A. That day I went up to Mr. Wells' I told him I understood he was the man that advanced me the money. I told him I had a letter from these people and I understood I could sell it. And he told me he didn't blame for making all I could out of it.

Q. Was it a note or deed that you signed?

A. It was a note.

Q. Was Mr. Wells in Mr. Pritchard's office when you took your receipt there and got \$250?

A. No.

Q. Was anything said why you didn't get more than \$250? A. No.

Q. Did you think this property was only worth \$250?

A. No, I didn't think—I thought it was worth more than that, but I expected that was all I could get out of it, and I wanted the money at the time.

Q. Did Mr. Wells ever say anything to you after that about repaying that money? A. No.

Q. I asked you if you signed that deed with your husband, didn't I? A. Yes.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Margaret Pearson, dated December 7, 1901, her testimony before the land office, dated February 21, 1902, the cross-examination attached, the receiver's and register's certificates, dated June 19, 1902, and the deed, made

(Testimony of Margaret Pearson.)

by William Pearson and wife, Margaret Pearson, to A. E. Palmer, consideration \$1800.00, dated March 23, 1903, all to the northeast quarter of section 12, and the southeast quarter of the southwest quarter of section 22, the north half of the northwest quarter, and the northwest quarter of the northeast quarter of section 27, township 7 north of range 5 east of Boise Meridian.

(Margaret Pearson papers marked Plaintiff's Exhibit No. 34A to 34G inclusive.)

Q. I will ask you one other question. How long after you made final proof was it that you went to Mr. Pritchard's office to make this deed?

A. I can't recollect just how long it was.

Q. The day you paid the money into the land office though with which to make final proof you took your receipt to Mr. Pritchard?

A. No, I did not.

Q. What was the receipt you went to sign of your husband's?

A. Oh, that was his final receipt.

Q. How long after you made your proof was it that you sold the land?

A. I can't recollect just how long it was.

Q. As near as you can remember?

A. It might be three or four weeks, and it might be five weeks, I ain't just sure.

Cross-examination.

(By Mr. FRASER.)

Q. Mrs. Pearson, in this case that we are trying

(Testimony of Margaret Pearson.)

now, that you are testifying in, the Government has alleged in its complaint that you and a number of other people entered into an agreement by which this land that you were to acquire, that you entered into an agreement before you filed on your land that the title which you were to get was to go to the Barber Lumber Company and to the people mentioned here. Is that true or false? A. It is false.

Q. You never made any agreement?

A. I had no agreement and was under obligation to no one.

(Witness excused.)

[Testimony of Lenora Hollister, on Behalf of the Complainant.]

LENORA HOLLISTER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Lenora Hollister?

A. Yes, sir.

Q. And you are the wife of Joseph M. Hollister?

A. I am.

Q. And you reside in Boise and have for a number of years? A. I have.

Q. Did you take up a claim under the Timber and Stone Act October 26, 1901?

A. I did about that time.

Q. I show you timber and stone land sworn state-

(Testimony of Leona Hollister.)

ment, dated October 26, 1901, and ask you if that is your signature? A. Yes, sir, that is.

Q. I show you testimony of Lenora Hollister, before the land office, dated January 21, 1902, and ask you if that is your signature?

A. Yes, sir.

Q. Did you ever take up any other claim under the Timber and Stone Act? A. I never did.

Q. Who first spoke with you about taking up this claim?

A. My husband spoke with me first.

Q. Mrs. Hollister, do you remember who prepared this first paper for you?

A. I don't know. I suppose my husband did. I don't know.

Q. Do you know?

A. No, I can't positively say.

Q. Where did you first see it?

A. At the land office was the first time I saw it.

Q. Who located you on this property?

A. Mr. Snow.

Q. And did Mr. Snow give you to understand on the way up there or at any other time how much you were to get out of this land? A. He did not.

Q. Did you have any understanding as to who you was to sell it to? A. I did not.

Q. Did you meet John I. Wells in this thing?

A. I did not.

Q. Did you meet Mr. Patrick Downs?

A. Mr. Snow located me.

Q. Did anyone besides your husband have any-

(Testimony of Leona Hollister.)

thing to say to you about selling this property?

A. No, sir.

Q. To whom did you sell it eventually?

A. I can't remember that.

Q. Where did you sell it?

A. At my home.

Q. Who brought the deed to you?

A. Mr. Pritchard.

Q. And you acknowledged it before him?

A. I did.

Q. Were you paid any money by Pritchard?

A. I was not.

Q. You were never paid any money by anybody?

A. No, sir.

Q. And your husband paid all the expenses, the money with which you proved up, made your final proof?

A. He did, all the expenses.

Q. Who got the money that came out of this?

A. I suppose we both got it.

Q. Did you ever get it?

A. I suppose I got some of it. I usually do.

Q. I mean, it wasn't given to you in a bunch? You got it as you needed it?

A. Yes.

Q. Did you ever execute but the one deed?

A. That was all.

Q. Do you remember how long that was after you made your final proof?

A. I couldn't say.

Q. Was it a year or a week?

A. I couldn't say, because I don't remember.

Mr. GORDON.—We offer in evidence the timber

(Testimony of Leona Hollister.)

and stone sworn statement of Lenora Hollister, dated October 26, 1901, her testimony before the land office, dated January 21, 1902, the cross-examination thereto, the certificates of the register and receiver of the land office, dated July 25, 1902, the patent to said land, dated February 1, 1904, and the certificate of recordation, the deed being already in evidence, to the north half of the northeast quarter, and the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section 18, township 7 north of range 5 east, Boise Meridian.

(Lenora Hollister papers marked Plaintiff's Exhibit No. 35A to 35F inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. I take it from your evidence, Mrs. Hollister, that the allegation that you made a timber and stone entry for the purpose of benefiting anyone else except yourself is not true? A. It is not.

(Witness excused.)

At this time court adjourned until 10 A. M., Tuesday, February 9, 1909.

Court met, pursuant to adjournment, at 10 A. M., Tuesday, February 9, 1909, the Examiner and counsel for the respective parties being present.

[**Testimony of Willis C. Lane, on Behalf of the Complainant.**]

WILLIS C. LANE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Willis C. Lane?

A. Yes, sir.

Q. Where do you reside, Mr. Lane?

A. Boise City.

Q. How long have you resided here?

A. About eight years I think, or nine.

Q. What is your age? A. Forty-two.

Q. What was your occupation in March, 1902?

A. Livery business.

Q. You made an entry under the Timber and Stone Act in 1902, did you?

A. I made an entry, but I don't remember the year at this time.

Q. I show you timber and stone land sworn statement dated March 25, 1902, and ask you if that is your signature. A. Yes, sir.

Q. And you filed that in the land office?

A. Yes, sir.

Q. I show you the testimony that you gave before the land office, and ask you if that is your signature?

A. Yes, sir.

Q. Dated June 18, 1902? A. Yes, sir.

Q. Mr. Lane, who first spoke with you about taking up a claim? A. I think my brother—

(Testimony of Willis C. Lane.)

Q. What did he say about it?

A. I don't remember the words at this time.

Q. As near as you can remember.

A. He called my attention to the fact that people were taking up timber lands and said he had taken up some, and he thought it would be good for me to take up a claim.

Q. And you were running the livery barn?

A. Yes, sir.

Q. Did you know John I. Wells at that time?

A. Yes, sir.

Q. Was he hiring teams from you?

A. Yes, sir.

Q. Did you have any talk with him about taking up a timber claim? A. I don't remember of it.

Q. And when you went to look at this timber land, did you go alone, or did someone go with you?

A. There was three or four men went with me; I don't remember just now—

Q. Did Mr. Gibson go with you, George G. Gibson? A. Yes, sir.

Q. And Mr. Hoover?

A. I believe that is the name.

Q. Was Mr. Patrick Downs with the party?

A. No, sir, he was not.

Q. Who located you? A. Mr. Downs.

Q. Where did you start from?

A. From Tenth and Bamock street.

Q. And when you got there did Mr. Downs meet you there, when you got up to the land?

A. I think he was at the hotel when we got to

(Testimony of Willis C. Lane.)

Idaho City.

Q. State what he did in locating you. Did he take you out alone or all together?

A. He took all of us out together.

Q. Did he show you one piece or a number of pieces of land?

A. I think he showed us a piece for each man that was along.

Q. He showed you a piece that was to be the one you were to locate on and each of the others the same?

A. Yes, sir.

Q. Did you pay him a locating fee?

A. I think that I did. I am not positive about it. I wouldn't like to say for sure, but I think I did.

Q. Do you know whether you paid anybody a locating fee?

A. If I paid anyone it was him.

Q. Did he give you a description of the land there? A. Yes, sir.

Q. What did you do with that description?

A. Brought it to the land office.

Q. Did you go anywhere after you came back with reference to that land before you went to the land office? A. I don't remember at this time.

Q. Do you remember who prepared this paper for you, this paper that you filed?

A. I think Mr. L. M. Pritchard.

Q. Did anyone direct you to go to Mr. Pritchard's office? A. I think so.

Q. Who was it?

A. I think Mr. Downs said to go to Pritchard's

(Testimony of Willis C. Lane.)

office and he would prepare the papers. Now, that you have mentioned it, I believe that was the case.

Q. Did you have to pay him for preparing that paper? A. I don't remember at this time.

Q. Now, when it came time to prove up you went to the land office? A. Yes, sir.

Q. Did you use your own money?

A. Yes, sir.

Q. All of it, or did you borrow it?

A. I had part of it and I borrowed part.

Q. Who did you borrow it from?

A. I think I got part of it from the Bank of Commerce.

Q. Did you get it on a check or on your own note, or did somebody put it there for you?

A. I think I got it on a note.

Q. Was it your own note?

A. Yes, sir; on my own note.

Q. Was it endorsed?

A. No, sir; I was doing business at the bank at that time.

Q. Do you remember how long that note was to run? A. No, I do not.

Q. You don't remember when you told them you would pay that note? A. No, sir.

Q. Do you remember how much you got from the bank on that occasion?

A. No, sir; I don't remember.

Q. Have you an idea? A. No, sir.

Q. You don't remember whether it was the whole amount?

(Testimony of Willis C. Lane.)

A. No, it wasn't the whole amount, but I don't remember at this time how much it was.

Q. Then you went to the land office and paid that money after you went to the bank and got the money?

A. Yes, sir.

Q. And now, up to this time, did you have any understanding or agreement that you were to turn this property over to any person or any unknown person?

A. Up to the time of the final filing?

Q. Yes.

A. I don't remember if I did or not up to that time.

Q. When Mr. Pritchard prepared these papers for you did you have any talk or understanding as to whether or not he was to get that property?

A. He may have told me that I could sell it if I cared to, but I don't think there was any understanding that he was to receive the property.

Q. Was there any understanding that he had some person or company that would take that property?

A. I don't know that I understood it that way.

Q. Well, after you proved up, or after you paid the money into the land office, did they give you a receipt for it, do you remember?

A. No, I don't remember. I think likely they did, but I don't remember.

Q. Do you remember what you did with it if they did, or whether you took it to somebody or not?

A. No, I don't remember of that at all.

(Testimony of Willis C. Lane.)

Q. Did you see Mr. Pritchard again with reference to this property?

A. After that final proof of the property?

Q. Either then or at any time between the time you made your original entry and the sale of the property?

A. I think that I did after that.

Q. Where did you see him?

A. I think at his office in the Sonna Building.

Q. Do you know what suggested to your mind the going to Mr. Pritchard's office?

A. No, I don't remember at this time.

Q. Do you know why you went there?

A. No, I don't remember now.

Q. Had you talked with Mr. Wells about this property in the interim between the time you made your original entry and the time you went up there?

A. I am not sure. I may have talked with him about it. He was getting teams and sending people out at different times and we may have talked about this at some time during these times.

Q. Did he tell you at any time that he would loan you the money to prove up with if you needed it?

A. I don't remember.

Q. You wouldn't say that he didn't?

A. I wouldn't say that he did or that he didn't, no, sir.

Q. Then you got to Mr. Pritchard's office, you don't remember on whose suggestion or why, but you went there?

A. Yes, sir. I want to say that I went in there several times because there was part of the time I

(Testimony of Willis C. Lane.)

got pay from Mr. Pritchard for the rigs.

Q. Mr. Pritchard would pay you for the rigs Wells was getting?

A. Part of the time he did, yes, sir.

Q. Well, the time that you eventually sold this property you sold upon the negotiations of Mr. Pritchard?

A. I am not able to say at this time whether it was through him or someone else.

Q. Who is the someone else that you have in mind that it might have been?

A. It might have been anyone. I am not sure that it was Mr. Pritchard; yet, it might have been.

Q. Did you sell it in Mr. Pritchard's office?

A. I think I did, yes, sir.

Q. And what happened the day that you sold it with reference to money, etc.?

A. I don't remember now. I got the money for it.

Q. Who gave you the money for it?

A. I believe Mr. Pritchard did. I am not sure, but I believe he did.

Q. Do you remember who else was in the office with Mr. Pritchard when you sold this property?

A. I do not.

Q. Was there anyone else there?

A. I don't remember if there was or not.

Q. And do you remember how much you were paid that day for this property?

A. I do not; no, sir.

Q. Have you an idea?

(Testimony of Willis C. Lane.)

A. Well, I think it was between four and five hundred. I am not sure.

Q. To the best of your recollection that was all the money you were paid for this property?

A. Yes, sir; as I remember it now.

Q. I have a deed here, Mr. Lane, signed Willis C. Lane. I will ask you if on that occasion you signed a deed? (Hands witness deed.)

A. That doesn't look very much like my signature.

Q. Will you state whether or not that is your signature?

A. I wouldn't be positive about it, but I don't believe it is.

Q. The deed that I am referring to is dated the 20th of April, 1903, signed Willis C. Lane, unmarried, and runs to A. E. Palmer, consideration \$1500. I will ask you, did he show you a deed there to sign?

A. I don't remember if they did.

Q. Do you remember of being asked to sign a deed? A. I do not.

Q. Do you know whether if a deed was shown to you it had \$1500 as the price you were paid for this land?

A. I don't remember at this time that it ever was.

Q. Did you know A. E. Palmer?

A. I did not.

Q. Did you ever know A. E. Palmer?

A. No, sir.

Q. Now, do you remember how long it was after you made your final proof that you went to Mr.

(Testimony of Willis C. Lane.)

Pritchard's office and got that four or five hundred dollars? A. I do not.

Q. Was it a week, a month, a day, six months, how long?

A. Well, I don't remember how long it was.

Q. Do you ever remember signing any deed at all for this property? A. No, sir; not a deed.

Q. Do you remember signing anything for this property?

A. Yes, I did, but I don't remember—it wasn't a deed. I don't remember what it was though.

Q. Was it a contract for the sale of it?

A. Yes, I am inclined to think it was something of that kind more than a deed, but I don't remember ever signing a deed for it.

Q. When was it that you signed that paper?

A. The time I presume that I went into his office and made the sale of the property.

Mr. KEIGWIN.—Q. That was shortly after you made your final proof?

A. Yes, I imagine it was shortly after that.

Q. A few days?

A. I imagine it was, yes, sir.

Mr. GORDON.—Q. Did you ever sign any other paper with reference to this after that?

A. I don't remember having done so, no, sir.

Q. Now, Mr. Lane, again about your signature to this deed. You have seen the signature, and can you state positively whether or not that is your signature, and you put it there?

A. I wouldn't like to state positively, no, sir, but

(Testimony of Willis C. Lane.)

I don't believe that it is. I couldn't be positive about it.

Q. Do you think you could write that well?

A. I don't believe that I do.

Mr. GORDON.—We offer in evidence the sworn statement of Willis C. Lane, dated March 25, 1902, the testimony of Mr. Lane, the claimant, before the land office, dated June 18, 1902, the cross-examination thereto, and the certificates of the register and receiver of the land office, dated June 18, 1902, and the deed, dated April 20, 1903, grantor Willis C. Lane, grantee A. E. Palmer, consideration \$1500, signed Willis C. Lane, the final proof papers, and the patent, to the northwest quarter of section 28, township 6 north of range 6 east, Boise Meridian.

(Lane papers marked Plaintiff's Exhibit No. 36A to 36N, inclusive.)

Mr. BUNDY.—Is that deed the 20th or the 28th, Mr. Gordon?

Mr. GORDON.—I think it is the 20th, Mr. Bundy.

Cross-examination.

(By Mr. FRASER.)

Q. About the time you went up to look at this tract of land that you afterwards filed on, there was a good deal of talk in Boise about timber lands being open to entry up in the Basin to be filed on by citizens, wasn't there, Mr. Lane?

A. I think there was, yes, sir.

Q. It was generally understood at that time?

A. Yes, sir.

(Testimony of Willis C. Lane.)

Q. And you, being in the livery business, you say a number of people had got teams at your barn for that purpose? A. Yes, sir.

Q. So, that without talking to anyone particularly you had known of the fact that you could locate one of these timber claims? A. Yes, sir.

Q. After thinking the matter over and talking to your brother you made up your mind to go up and look at one? A. Yes, sir.

Q. And you made up your mind to file on this timber claim of your own free will and without any suggestion from anybody else, didn't you?

A. Yes, sir.

Q. And you say one was pointed out as the one you could locate on? A. Yes, sir.

Q. Did you ask to be shown any other claim, or did you have your say about it?

A. I did not ask to see others. I took the one that was shown to me.

Q. You were satisfied to file on that first claim that was pointed out to you that you could file on?

A. Yes, sir.

Q. And you made no request that you be located on any other quarter section? A. No, sir.

Q. When you came back to Boise how long were you in Boise before you filed your first papers in the land office?

A. A day or so, I don't remember.

Q. You hadn't talked to anybody particularly in regard—before you filed, about entering?

A. No, sir.

(Testimony of Willis C. Lane.)

Q. In this first paper, 36A, I find the following answer in here: "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Was that true at the time you made it? A. It was.

Q. Up to that time you never had agreed to sell this claim up to this time? A. No, sir.

Q. In fact nobody had asked you to sell it, had they? A. They had not.

Q. And you had made no agreement with anybody by which they were to get the timber or any of it, had you? A. No, sir.

Q. So that answer was true and correct at the time you made it in the land office?

A. Yes, sir.

Q. So that when you came to make the deed you didn't care who bought it as long as you got your money, did you? A. No, sir.

Q. And you possibly didn't examine that deed carefully?

A. I don't remember ever seeing the deed.

Q. You wasn't practically interested in it after you made arrangements to get your money?

A. No, sir.

Q. And I understand you to say you may have

(Testimony of Willis C. Lane.)

acknowledged this deed which is in evidence here?

A. I may have done so, yes, sir.

Q. Now, Mr. Lane, the bill of complaint in this case alleges—one of the allegations, and the principal one of this complaint is, that you, together with other parties, but as far as you are concerned, you particularly, went up and entered this land at the land office at the time you filed the first papers, that you did it with an understanding or agreement that after you got title you was to turn it over to the Barber Lumber Company, or James T. Barber, or Moon, or Sweet, or Kinkaid, or Pritchard, Downs, and Horace Rand. Is that true or false?

A. I don't remember of ever hearing those names up to that time.

Q. Is that allegation that you entered into this agree— A. (Interrupting.) I did not.

Q. Then that allegation is false as far as you are concerned? A. Yes, sir; it is false.

Q. You never had any such agreement with any person at that time? A. No, sir.

Q. You never had any such agreement with these men or any other person at that time?

A. No, sir.

Q. I intended to ask you, at the time you made your final proof you hadn't this agreement either, you hadn't any such agreement as I have mentioned here?

A. No, sir; I think not. I don't remember of any agreement at that time.

Q. You never tried to sell it until after you got

(Testimony of Willis C. Lane.)

your final receipt, did you?

A. No, sir; I did not.

Q. No one ever had any interest in it up to that time, until after you made your final proof?

A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Do you remember whether John Wells went to the land office with you when you filed this paper (showing witness paper)?

A. No, sir; I don't remember.

Q. I notice on the first paper you filed that the register certifies that "has been satisfactorily identified to me by John I. Wells." Does that refresh your recollection to any extent?

A. No, sir; it does not. He may have been there; I don't remember if he was there or not.

(Witness excused.)

[Testimony of William Pearson, on Behalf of the Complainant.]

WILLIAM PEARSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William Pearson?

A. Yes, sir.

Q. What is your business, Mr. Pearson?

A. Painter.

Q. You are married?

A. Yes, sir.

(Testimony of William Pearson.)

Q. What is your wife's name?

A. Margaret Pearson.

Q. And she is the lady who testified here yesterday afternoon?

A. Yes, sir.

Q. Where do you reside?

A. Boise.

Q. How long have you resided here?

A. About eight and a half years.

Q. Where did you come from?

A. Scotland.

Q. Do you remember taking up a claim under the Timber and Stone Act in November, 1901?

A. Yes, sir.

Q. How long had you been in this country at that time?

Mr. BUNDY.—We object to that as immaterial, incompetent and irrelevant, and not tending to prove any of the allegations of the complaint.

A. About a year.

Q. How long had you been in Idaho?

Mr. BUNDY.—Same objection.

A. About a year.

Q. I show you timber and stone land sworn statement, dated November 26, 1901, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you testimony of claimant taken before the land office, dated February 13, 1902, and ask you if you signed that paper?

A. Yes, sir.

Q. Who was the first person that you can remember that spoke with you about taking up a timber and stone claim?

A. Dean West.

(Testimony of William Pearson.)

Q. Did you live with Mr. Dean West at that time?

A. Yes, sir.

Q. State what Mr. West said about taking up a claim?

A. He told me I could take up a claim, file on it, and prove up on it, and sell it, and make a piece of money out of it.

Q. Did he tell you how much money you could make out of it? A. About \$250.

Q. At that time did he tell you how much it could cost you to buy one of these claims?

A. I don't remember.

Q. Did you have sufficient money at that time with which to pay for one of these claims?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial.

A. Not quite enough.

Q. Were you told that you could get the money with which to make final proof?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and not calling for a conversation with any specific person.

A. I sort of think I understood some way from Mr. West that I could borrow the money to prove up.

Q. Who did he tell you you could borrow it from?

A. He didn't say.

Q. You and your wife went up to view this land?

A. Not together.

Q. Did you go by yourself or who went with you?

A. I went with a party of four, three others.

Q. Do you remember who they were?

(Testimony of William Pearson.)

A. Yes, sir; L. K. Burns, Walter Harrison, and Miss O'Farrell.

Q. Did anyone else go along?

A. Pat Downs was driving.

Q. Do you know who arranged for this party to go? A. Mr. West.

Q. And where did you meet?

A. Pacific Hotel.

Q. Had you met Mr. Downs before this?

A. I had not.

Q. Did you know Mr. John I. Wells at this time?

A. I did not.

Q. You went up and located them, did you?

A. Yes, sir.

Q. And who located you? A. Pat Downs.

Q. Did you have any understanding or agreement as to what you were to pay him for locating you? A. \$25.

Q. Did you pay it? A. I did.

Q. When? A. After I filed.

Q. How long after you filed?

A. Two or three days.

Q. You paid it to him personally?

A. I think so.

Q. You were shown over this land by Mr. Downs?

A. Yes, sir.

Q. Did he show you certain land and then say this was the piece you were to take?

A. No, if I remember right, we were shown over quite a few pieces, three of them anyway, and told to take our pick out of them, all three men went to-

(Testimony of William Pearson.)

gether.

Q. And either one of the three could pick either one of the three; they were the only three pieces that were shown you? A. I think so.

Q. And were you given a description of that property by Mr. Downs?

A. Some one of us was, I don't know which.

Q. He gave the descriptions of all the three to one of you? A. I think so.

Q. Now, did you take Miss O'Farrell with the rest of you, or did he take Miss O'Farrell off separately?

A. She was taken off separately, as I remember.

Q. And her location was in the vicinity of yours?

A. I don't know anything about that.

Q. Well, was she one of the three that he took along or—

A. No, Burns, Harrison and I were the three.

Q. Took her off separately. Where was the town you went to? A. Centerville.

Q. Did you go over your land or was it pointed out to you?

A. No, we were over it.

Q. You were away from Centerville then?

A. Yes, sir.

Q. How far?

A. I should think it would be two or three miles.

Q. And do you know which one he gave the descriptions to? A. I do not.

Q. *I wasn't you?* A. It may have been.

Q. What is your best recollection?

(Testimony of William Pearson.)

A. I haven't got any recollection about just who got it. It may have been me, and it may have been any of the others.

Q. You all came back together?

A. Yes, sir.

Q. What were you to do with these descriptions when he gave them to you? Where were you to take them?

A. There was nothing specified so far as I know where we were to take them to.

Q. I assume that as they were all together it was intended they would copy them off, or would take them to some place where they would all be together and have the papers made out. Do you know anything about that?

A. Yes, I know where mine was made out.

Q. Where? A. Dean West.

Q. Did he have the description of the land? Where were they made out?

A. I don't know—I think he made out Burns' too, at Dean West's house.

Q. And did you all go to the land office together?

A. I think so.

Q. How long after you returned?

A. I think it was the next day.

Q. Did Mr. West go to the land office with you?

A. I can't remember.

Q. Do you remember who went to the land office with you? A. I do not.

Q. You don't remember whether you went alone or whether the rest of them went with you?

(Testimony of William Pearson.)

A. I think we were all there; I just think we were all there.

Q. Did Mr. Harrison live in the neighborhood with you? A. Yes, sir.

Q. How far from you?

A. About two blocks.

Q. And Miss O'Farrell?

A. She lived in the east part of town.

Q. How far from where you lived?

A. Perhaps twenty blocks.

Q. Was there any arrangement that you should meet there at the land office, or did you meet casually? A. I think it was casually.

Q. And you paid a certain filing fee at the land office? A. Yes, sir.

Q. And then it came time to make your final proof? A. Yes, sir.

Q. Who notified you as to that?

A. The land office.

Q. How did you prove up with your own money when you went to the land office, or where did you get the money with which to prove up?

A. Got the money from John Wells.

Q. John I. Wells? A. John I. Wells.

Q. Had you met Wells in relation to this transaction before then?

A. Oh, possibly two or three days.

Q. Had you any acquaintance with Mr. Wells before that time? A. I did not.

Q. Never had any business transactions with him? A. No, sir.

(Testimony of William Pearson.)

Q. Didn't know him? A. No, sir.

Q. And who introduced you to Mr. Wells?

A. Mr. West.

Q. How long before you made your proof?

A. Oh, I couldn't say just exactly how long it would be. It might have been quite a little while, a few weeks, maybe a month, maybe two months.

Q. Did you see Mr. Wells before you made your original entry? A. I did not.

Q. Did you meet Mr. Wells at his office, or did he come to your house? A. At what time?

Q. At the time you met him?

A. No, I met him on the street.

Q. With Mr. West? A. West.

Q. Did you meet him by appointment?

A. I did not.

Q. Just met him incidentally? A. Yes, sir.

Q. And was anything said at that time about the money with which you were to prove up?

A. I don't remember that there was.

Q. Well, when you went to get your money to prove up, did you get it from his office, or where did you get it?

A. I got it on the street.

Q. Did you meet him casually or did you have an appointment?

A. I think it was by appointment.

Q. Where did you meet him?

A. It was somewhere on Main street—I don't know whether it was between Eighth and Ninth, or Ninth and Tenth.

(Testimony of William Pearson.)

Q. And how much money did he give you?

A. As near as I remember, about \$412, maybe \$412.50.

Q. Did he just hand it to you on the street?

A. Yes, sir.

Q. Did you leave him then or did you go to his office?

A. I left him then.

Q. Did you give him a note for this money?

A. I did not.

Q. Pay him any interest for it?

A. I did not.

Q. Did he say anything to you about what you were to say in the land office as to where you got this money?

A. I don't think so.

Q. Did someone tell you that you were to say at the land office that that was your money?

A. May have.

Q. Have you any idea who it was if they did?

A. No, I haven't. It may have been Mr. West and it may not.

Q. Were you told by either Mr. West or Mr. Wells to say that you had no agreement to sell this land?

A. No, sir.

Q. You are sure of that?

A. Yes.

Q. And you went to the land office, and they gave you a receipt for the money you paid, that \$412.50, in the land office?

A. Yes, sir.

Q. Did you make any arrangements then about the money with which your wife should make her final proof?

A. No, sir.

(Testimony of William Pearson.)

Q. Do you know who made them for her?

A. Yes, sir.

Q. Who? A. Mr. West.

Q. Then what did you do with this receipt you got from the land office? A. Took it home.

Q. How long did you keep it?

A. Possibly two or three weeks.

Q. Then what did you do with it?

A. Well, after that I took it up to Pritchard's office.

Q. L. M. Pritchard? A. Yes, sir.

Q. Had you ever met Mr. Pritchard before then?

A. I had seen him lots, but I didn't know him.

Q. Did you know his name was Pritchard?

A. I did not.

Q. Just knew when you met Mr. Pritchard that he was the man you had seen on the street on a number of occasions? A. Yes, sir.

Q. Who went to Mr. Pritchard's office with you?

A. My wife did.

Q. Anybody else? A. No, sir.

Q. Was anybody else there?

A. There was not.

Q. Who told you to go to see Mr. Pritchard?

A. I think it was Mr. West.

Q. And did you negotiate for the sale of this property with Mr. Pritchard then?

A. Yes, sir.

Q. Did he pay you for it then?

A. Yes, sir.

Q. How much did he give you?

(Testimony of William Pearson.)

A. About \$250.

Q. About? A. I think it was \$250.

Q. Did he say anything to you at that time about the money you had gotten from Wells?

A. Not that I remember; I don't remember anything about it.

Q. You didn't say anything about it?

A. No, sir.

Q. Did you have any talk about how much you were to get for the land, or was it understood?

A. I don't remember just how it was, but I think I had an understanding from Mr. West that we would get \$250 clear money.

Q. When was that understanding?

A. Before I went up there.

Q. Before you went up where?

A. To Pritchard's office.

Q. Was there any intimation of that kind given you before you went up to look at the timber?

A. There was not.

Q. Did you sign any papers at—tell me what Mr. Wells said to you when he gave you that \$412.50.

A. I don't remember what he said.

Q. Didn't he say anything?

A. He may have, and he may have not. I don't remember of any conversation.

Q. Now, did you think it was singular that Mr. Wells would give you this \$400, that you had never known him, not give a note for it, or pay him any interest on the money? A. I did not.

Q. You thought it was all right?

(Testimony of William Pearson.)

A. Yes, sir.

Q. Did you think you were under any obligations to Mr. Wells that you should convey this property to him, or to someone he would suggest, in consideration of him handing you that money that way?

A. I did not.

Q. Did you sign any paper at L. M. Pritchard's office when you received this money?

A. Yes, I did.

Q. Do you know what it was?

A. I think it was a deed.

Q. And your wife was there at the same time?

A. Yes.

Q. And do you know how much money she received?

A. She didn't sell at the same time I did.

Q. Did she make a deed for her property the same time you made a deed for yours? A. No, sir.

Q. You went there and made a deed to your property before your wife? A. Yes, sir.

Q. And she was there and joined in the deed?

A. No, sir, didn't join in the deed that I remember of; she was with me.

Q. And later when she sold did you go down to join in the deed she made?

A. I don't remember now whether I did or not.

Q. Were you with her?

A. I may have been.

Q. Were you with her when she received her money? A. No, sir.

Q. Mr. Pearson, I show you Exhibit 34G, a deed

(Testimony of William Pearson.)

dated the 23d of March, 1903, and signed by William Pearson and Margaret Pearson. Do you remember of signing that deed, and is that your signature to it?

A. That is my signature all right.

Q. Do you remember when that deed was signed?

A. I do not.

Q. Do you remember whether you signed it on the occasion that Mr. Pritchard gave you the money?

A. I don't think so.

Q. Do you remember how much later it was that you signed it?

A. I do not.

Q. Do you remember how many times you went to Mr. Pritchard's office, or saw Mr. Pritchard, with reference to the property contained in that deed, after you received your money?

A. I do not.

Q. Did you ever see him with reference to this property after you received your money?

A. My property?

Q. Yes.

A. No, not my property.

Mr. KEIGWIN.—Mr. Pearson, do you remember being in the district attorney's office in this building in the month of March, 1907?

A. Yes, sir.

Q. Do you remember being here on the 20th day of that month?

A. I don't remember about the dates.

Q. You remember the month?

A. I might have been here.

Q. With whom did you have a conversation in the marshal's office on that occasion—in the district attorney's office?

A. The only one I mind talking to that time was

(Testimony of William Pearson.)

Johnson.

Q. Mr. Johnson was the assistant district attorney at that time, was he not?

A. I guess he was.

Q. And did Mr. Johnson ask you a number of questions about this transaction?

Q. Went over pretty much the same ground Mr. Gordon has gone over, didn't he?

A. I know he seemed to know more than I did.

Q. Do you know whether there was any memorandum taken of the questions and answers on that occasion?

A. I guess there was.

Q. Was there a stenographer present?

A. I guess so.

Q. You say that he was taking down what you said, did he?

A. He may have been.

Q. I show you here a paper which purports to be the statement of William Pearson, taken March 20, 1907, and ask you to look over that and see if that seems to you to be the examination which you gave on that occasion.

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and attempting to impeach their own witness.

Mr. FRASER.—Is it signed? Did Mr. Pearson ever see it before?

Mr. KEIGWIN.—That is what I am trying to find out. It isn't signed.

Mr. KEIGWIN.—Q. Mr. Pearson, it is not necessary to read the entire paper over. I just asked you if you recognize that as being in a general way

(Testimony of William Pearson.)

the statement you made?

A. It is, I guess, yes.

Q. Does that seem to you, according to your recollection, to embody the examination which took place on that occasion?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, not calling for specific question and answer.

Mr. FRASER.—Did you ever see that before, Mr. Pearson? A. I did not.

Mr. FRASER.—You don't know what is in it, do you? A. I do not.

Mr. KEIGWIN.—Q. Mr. Pearson, did you agree to pay Pat Downs or John Wells \$25 for locating you on this land?

A. I did, yes; I agreed to pay \$25 for locating.

Q. To whom?

A. I understood the cruiser was to get it, Pat Downs.

Q. Did you pay Pat Downs?

A. I am not sure, but I think I did.

Q. Now, on the 20th of March, 1907, when this statement of yours was taken, do you remember that this question was put to you and this answer given:

Q. What did you pay him (meaning Pat Downs)?

A. I didn't pay him anything. I paid \$25 to John Wells after I had made my entry. That was the agreement, that I was to give him \$25 after I got my entry made.

Mr. FRASER.—We object to that as immaterial and irrelevant, attempting to impeach their own wit-

(Testimony of William Pearson.)

ness, calling for statement he never saw before. The witness wasn't under oath and has no knowledge of it.

Mr. KEIGWIN.—Q. My question now is, was that question and answer correctly reported, is it correctly reported?

A. It may be; I don't remember.

Q. You don't remember whether you said it, or whether it was true?

A. I don't remember about it.

Q. You don't remember whether there was any agreement, whether you were to give Mr. Wells \$25?

A. I do not.

Q. You don't remember whether you made this statement or not?

A. I don't remember a thing that was asked me except I read that over.

Q. I think you used the money which you got from Mr. Pritchard to buy a lot, did you not?

A. Yes, sir.

Q. You used \$450? A. Yes, sir.

Q. Do you remember how long after you got that money you bought the lot?

A. It was some time that fall; I don't remember when.

Q. A few days or a few weeks?

A. It may have been a few months.

Q. Now, when you made your entry, that is, your original application at the land office, I mean directly after you came back from the timber land up there, had you received any promise or assurance

(Testimony of William Pearson.)

from anybody that the necessary money would be supplied to you?

A. I had not, not that I remember.

Q. Nobody had told you where you were going to get the money? A. Not that I mind of.

Q. And you didn't know where you were to get the money? A. No, sir.

Q. Did you or did you not have any information to the effect that there were people in this city who would be willing to supply you with the necessary money?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and it has been gone over once, and an attempt to impeach their own witness.

A. Not that I remember of.

Mr. KEIGWIN.—Counsel disclaim any intention to impeach this witness.

Q. Now, the money you got from Mr. Wells was handed to you on the street, I believe?

A. Yes, sir.

Q. What previous arrangements or negotiations had there been between you and Mr. Wells?

A. The arrangements as near as I remember were between Mr. West and Mr. Wells.

Q. Were you present when those arrangements were made? A. I don't think so.

Q. But you understood and you understand now that there had been some arrangement made between Mr. West and Mr. Wells?

A. As near as I mind, Mr. West was to see about getting me the money.

(Testimony of William Pearson.)

Q. He was to get it from Mr. Wells?

A. It may have been, and it may have been someone else.

Q. As near as you understand, you had never had any direct communication with Mr. Wells before he gave you this money?

A. Not that I mind of.

Q. And you met him on the street and he handed you the money?

A. I was talking to him on the street and he gave me the money.

Q. You were introduced to him on that occasion?

A. No, sir, I was introduced to him before that.

Q. Well, and there was nothing said to you before the money was given to you?

A. I don't think there was.

Q. He simply handed you the money in silence?

A. I don't remember of any conversation.

Q. You knew what the money was for?

A. Yes, sir.

Q. You knew what it was intended to be used for?

A. I had a good idea.

Q. So that it was not necessary to make any explanation at that time. Is that the reason there was no explanation?

A. I don't think there was any.

Q. Now, on this occasion to which I have referred, when you were examined in the district attorney's office by Mr. Johnson, was this question asked and this answer given which I proceed to read:

“Q. When they gave you this money, this \$400, they

(Testimony of William Pearson.)

gave it to you with the understanding that you was to transfer the land?" A. They didn't say anything to me, but I understood it all right."

Mr. BUNDY.—That is objected to as incompetent, irrelevant, immaterial, and attempting to impeach their own witness.

A. I don't remember of it.

Q. You don't remember that question and answer? A. I do not.

Q. Are you prepared to say, Mr. Pearson, that that question was not asked and that answer given?

A. I don't know whether it was or not.

Q. On the same occasion, was this question asked and this answer given which I proceed to read: "Q. Did Wells give you to understand that that would be the amount before you went up into the timber? A. Yes, sir."

Mr. BUNDY.—Same objection.

Q. Do you remember that? A. I do not.

Q. You don't know whether the question was asked and the answer given?

A. I don't know whether it was ever asked or not.

Q. Do you know whether or not this question was asked and this answer given: Q. "So before you went up into the timber at all, Wells gave you to understand that you would get \$250, and that they would furnish the money? A. Yes, sir."

Mr. BUNDY.—The same objection, and further that it is an attempt to impeach their own witness, and we ask counsel to state on the record whether or not that is the intention.

(Testimony of William Pearson.)

Mr. KEIGWIN.—Counsel for the complainant state in this instance, and in respect of these matters that they have been surprised by the testimony of this witness, and they take this method of endeavoring, first to refresh the memory of the witness, and, secondly, in the event of failure in that regard, to prove by other evidence that these questions were asked and these answers given.

Mr. BUNDY.—So that you do intend to impeach the witness in this evidence.

Mr. KEIGWIN.—We don't say that at all. We can't impeach the witness when he says he doesn't know.

Mr. KEIGWIN.—Q. Mr. Pearson, on this same occasion, on your interview at the district attorney's office, on March 20, 1907, were these questions asked and these answers given, which I will proceed to read, collectively, for the sake of brevity? Q. "But then they had paid this \$400 to buy this timber, and it was up to you to make good, that is, you felt that way? A. I felt that way. Q. And they cautioned you to swear in the land office that it was your own money? A. Yes, sir. Q. And they told you to be careful to say that you had no agreement for its sale, didn't they? A. I don't remember, but I guess they did tell me that." Were those questions asked you and those answers given in that way, Mr. Pearson?

A. I don't remember of them.

Mr. GORDON.—We offer in evidence the sworn statement of William Pearson, dated November 26th, 1901, testimony of the claimant, dated February 13,

(Testimony of William Pearson.)

1902, cross-examination thereto, the certificates of the register and receiver, dated June 23, 1902, and the patent, dated 28th of January, 1904, certificate of recordation attached, and the deed, which he identified, which is among the exhibits of his wife.

(William Pearson papers marked Plaintiff's Exhibit No. 37A to 37N inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Pearson, I will begin the cross-examination where they left off. With reference to this so-called statement that your attention has been called to, and which it is claimed is a typewritten statement you made on March 20, 1907, in the parlor of the district attorney in this building—

The WITNESS.—In the what?

Mr. BUNDY.—In the office or room, some place here, of the district attorney, did you understand at the time this gentleman was talking to you that you were under oath? A. I did not.

Q. And you were not under oath, were you?

A. I couldn't say that I was, and I couldn't say that I wasn't.

Q. They didn't swear you?

A. I don't remember.

Q. You didn't understand you were?

A. I didn't understand I was.

Q. You said they seemed to understand more about it than you did? A. Yes, sir.

Q. Did Mr. Johnson go on and tell you by his

(Testimony of William Pearson.)

questions how he thought it was before questioning you? A. Yes, sir, he did.

Q. And these questions that have been read to you, and asked you whether or not you were asked such a question and you made such an answer, and you have testified that you don't remember anything about it.

A. I don't remember ever hearing them.

Q. You don't know, I suppose, whether the reporter put down your answers correctly or whether he didn't, or whether he put down the questions correctly or whether he didn't?

A. I do not.

Q. You don't know whether this statement is what you said or not? A. I do not.

Q. If your evidence to-day on the witness-stand is any different from this statement, then the statement is not right, is it?

A. I wouldn't think it was.

Q. Your evidence to-day is in exact accordance with the truth, is it not?

A. It is as near as I know the truth.

Q. If this so-called statement is any different from that, then the statement is not correct, is it?

A. I wouldn't like to say that.

Q. I mean the statement isn't true if it states it any different from what you have testified to-day?

A. I do not like to say as I remember.

Q. Your first talk with anybody about timber and stone land was with Dean West, your neighbor, as I understand? A. Yes, sir.

(Testimony of William Pearson.)

Q. You lived in his house at that time?

A. Yes, sir.

Q. And Mr. West simply told you that under the law of the land you could file on a quarter section, prove up on it, and afterwards sell it?

A. Yes, sir.

Q. Did he tell you at that time you would have to sell it to any particular person?

A. He did not.

Q. Did you understand you could file on it and sell to whoever would pay you the most for it?

A. I understood I could file on it, prove up on it, and sell it, and get a piece of money out of it.

Q. And by getting a piece of money out of it you understood you could sell it at a profit, did you not?

A. Yes, sir.

Q. You believed you could sell it for more than it cost you?

A. Yes, sir.

Q. You didn't understand, did you, Mr. Pearson, that you were making your filing there for anybody else?

A. I did not.

Q. You didn't understand you were employed by anybody to make a filing?

A. I did not.

Q. But you took it for the purpose of getting it and afterwards selling it and making a piece of money out of the profit?

A. Yes, sir.

Q. You say Mr. Downs drove the team when you went up there?

A. Yes, sir.

Q. You understood at that time that Mr. Downs was a cruiser?

A. I did.

Q. A man that made his living by locating people

(Testimony of William Pearson.)

on lands? A. That was my understanding.

Q. Did Mr. Downs on the way up there, or at any time, talk to you about what you should do with this land when you got it? Didn't mention selling it or offer to buy it from you?

A. Not that I remember of; I don't think so.

Q. One matter that I think there was a little error about. After you made your final proof and paid in the money to the land office, don't you remember that they gave you a receipt of the money first? A. Yes.

Q. Then you kept that receipt for some time?

A. Yes, sir.

Q. And in fact your final proof was held up for some time, was it not? A. Yes, it was.

Q. And you had to wait, I believe, several months before your final proof was allowed. Your final proof seems to have been allowed June 23, 1902, while you paid in the money February 13, 1902?

A. Yes, sir.

Q. Now, it was after your final proof had been allowed and your final receipt had been issued to you that you went up to Mr. Pritchard's office and sold and got the money, was it not?

A. Yes.

Q. You stated in your direct evidence that you kept this first receipt you got only a few weeks.

A. I understood it was the final receipt he talked about.

Q. Then after you got your final receipt, you kept that a few weeks? A. Yes, sir.

(Testimony of William Pearson.)

Q. Now, up to the time you got your final receipt, had you had any talk with anybody about selling this land?

A. No, but my wife had a letter from a party in the Basin, and we wrote them we had nothing to sell until after we got the final receipt. When we got it we tried to do business with them, and they didn't come through, and we let it drop.

Q. Before you got final receipt who was it your wife had a letter from? A. Morgan.

Q. And you wrote to Mr. Morgan that you didn't have anything to sell then. Is that right?

A. Yes, sir.

Q. Then after you got your final receipt and final proof had been allowed, then you took it up again, did you? A. Yes, sir.

Q. How? By letter? A. By telephone.

Q. And tried to sell the claims to him?

A. Yes, sir.

Q. Then who did you look to?

A. Pritchard.

Q. Up to that time had you made any effort to sell it to John I. Wells, Pritchard, or Downs, or any of the men that have been mentioned?

A. I had not.

Q. In your final proof papers, the first document which you signed when you went to the land office to make your original filing, on November 26, 1901, you said, Mr. Pearson, among other things: "And that I have not, directly or indirectly, made any agreement or contract, or in any way or manner,

(Testimony of William Pearson.)

with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement at that time was absolutely true, was it not?

A. I guess it was.

Q. You say you guess—

A. It was absolutely true.

Q. You had never made any arrangement to sell it and nobody had offered to buy it?

A. I didn't know of anybody.

Q. Your expectation was that it would be easy for you after you had made your filing to borrow sufficient money to prove up with?

A. Yes, sir.

Q. And you expected to do that?

A. Yes, sir.

Q. When it came time to make final proof you had some talk about borrowing money?

A. Yes, sir.

Q. And did you authorize Dean West to borrow that money for you? A. Yes, sir.

Q. So that Mr. Dean West was the man that negotiated this loan with Mr. Wells?

A. Yes, sir.

Q. So that when you met Mr. Wells on the street and got the money there wasn't any particular occasion for negotiating; that had all been done before by Mr. West? A. Yes, sir.

Q. Mr. West had advised you, had he, that he had arranged for Mr. Wells to loan you the money, and

(Testimony of William Pearson.)

there was nothing further for you to do but to get it, which you did?

A. Yes, I got the money from Mr. Wells.

Q. And after you got the money from Mr. Wells you went to the land office and proved up, and waited several months until the final receipt came?

A. Yes, sir.

Q. And between the day you paid in the money and the day you got the final receipt you had had no negotiations, had no talk, with anybody about selling this land, except the letter your wife had received from the man in the Basin?

A. That is correct.

Q. Mr. Pearson, in this lawsuit we are trying here, the Government claims, in the bill of complaint, as we call it, that you made this timber and stone entry in question for the benefit of the Barber Lumber Company and a lot of other people that are named in the complaint. Is that true or false?

A. It isn't true I don't think so far as I know.

Q. You know whether you had any arrangement with anybody by which you was to make this timber and stone entry?

A. I said I didn't already.

Q. It is also alleged in this complaint that you made this timber and stone entry under an agreement with the Barber Lumber Company, Mr. Moon, Mr. Barber, Mr. Wells, Mr. Kinkaid, Mr. Pritchard, and some other gentlemen named, that as soon as you got title you would turn it over to them, or to whoever they should direct. Is that allegation true or false?

A. It isn't right.

(Testimony of William Pearson.)

Q. You said that you were advised at the time you made this timber and stone entry that you could make about \$250 out of it. Now, did you understand, was that your understanding, that you would be able to sell it for \$250 more than it cost you?

A. Yes, sir.

Q. And was that the way you expected to make this \$250 that has been mentioned?

A. No, I understood that when we proved up on it we could sell it if we wanted to and make some money out of it.

Q. The amount would depend on what you sold it for?

A. It might be that a man would get \$250 and maybe more.

Q. But whatever you got would be by way of selling it for more than it cost you? A. Yes, sir.

Q. What I am trying to get at is that you didn't understand that you were working for wages or that anybody was going to pay you for exercising your right? A. I didn't understand it that way, no.

Q. Who proved up first, you or your wife, do you remember? A. I don't remember.

Q. Do you remember who got final receipt first?

A. I do not.

Q. Do you remember who sold first?

A. I did.

Q. You sold first, and your wife later?

A. Yes, sir.

Q. I understand the first time you met John I. Wells was when Mr. West introduced him to you

(Testimony of William Pearson.)

some time after you made your first filing?

A. Yes, sir.

Q. At the time you made this first filing you had never talked with John Wells at all, had you?

A. Didn't know him at all.

Q. And the time West introduced you to him was some time before final receipt, was it?

A. Yes, sir.

Q. Do you recall about how long?

A. I couldn't.

Q. But in any event it was before you made final proof?

A. Yes, sometime before I made final proof.

Q. At the time you were introduced to Mr. Wells you didn't have any talk about money?

A. No, I don't think it was mentioned.

Q. And you never did have any talk about it until the day you got it? A. No, sir.

Q. And at the time you did get the money you didn't have any talk about buying the land?

A. No, sir.

Q. And at the time you went to Mr. Pritchard you didn't know whether he was buying the land for himself or for somebody else?

A. I didn't understand at that time how the buying was.

Q. You went to him because he was the only man in the market that was buying timber?

A. Yes, sir.

Q. The money Mr. Wells had advanced to you was taken out?

(Testimony of William Pearson.)

A. I understood Mr. Wells would get his money.

Q. I suppose you didn't know at that time, did you, Mr. Pearson, that Mr. Pritchard was buying this land for John I. Wells—don't know it now?

A. No, I didn't.

Q. Do you know whether Mr. Pritchard was acting for Mr. Wells or who he was acting for?

A. No, I didn't.

At this time an adjournment was taken until 2 P. M., Tuesday, February, 9th, 1909.

Court met, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Charles S. Kingsley, on Behalf of the Complainant.]

CHARLES S. KINGSLEY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Kingsley, how long have you resided at Boise? A. About twenty-eight years.

Q. What is your profession?

A. I am an attorney at law.

Q. And you have been practicing a number of years? A. Yes, sir.

Q. And were practicing law in September, 1902?

A. Yes, sir.

Q. You are a married man? A. Yes, sir.

Q. Is your wife Caro F. B. Kingsley?

(Testimony of Charles S. Kingsley.)

A. Yes, sir.

Q. You took a claim under the Timber and Stone Act in September, 1902?

A. I can't tell the date; about that time.

Q. I show you timber and stone land sworn statement, dated September, 11, 1902, and ask you if that is your signature? A. Yes, sir.

Q. I show you testimony by Charles S. Kingsley, dated December 22, 1902, and ask you if that is your signature? A. It is.

Q. A deed dated March 12, 1903, running to Horace S. Rand, Signed Charles S. Kingsley and Caro F. B. Kingsley, and ask you if they were signed by you and your wife? A. Yes, sir.

Q. Mr. Kingsley, did anyone suggest to you the propriety of taking up a claim under the Timber and Stone Act? If so, who?

A. No, sir. My relations as practitioner in the land office were such that I knew that timber filings were being made, and I had made up my mind to make a timber and stone filing.

Q. And you and your wife both made filings?

A. We did, yes, sir.

Q. And did the two of you go to view the land together? A. Yes, sir.

Q. Was anyone else with that party?

A. Yes, sir, Mr. Irving W. Hart and his wife, and Mrs. Kingsley and myself.

Q. How, who arranged for that party?

A. Mr. Hart arranged for the team. I became related to Mr. Hart and his wife in the matter just

(Testimony of Charles S. Kingsley.)

this way: Mr. Kinkaid in front of my office building—

Q. (Interrupting.) Mr. John Kinkaid?

A. Yes. —asked me if I had made a timber and stone entry. I told him no, but that I expected to. At that time I had no knowledge that Mr. Kinkaid was in any way connected with the timber interests in the State of Idaho. He said he thought it was a good thing; that there was a market in the State now for those lands, and he thought it would be a good thing.

Q. Did he state at that time, if you know, how good a thing it was?

A. No, sir, I think nothing was said at that time with reference to the values of timber lands. I knew, or thought I knew, what timber lands might be expected reasonably to be worth, and had my own ideas about that. I next—and how long afterwards I do not remember—but our next move, John Kinkaid, in relation to the matter, asked me if I knew Irving W. Hart and his wife. I did very well. Mr. Hart had been stenographer in the court of which I was clerk, and he said they were making an entry, and if I was ready to go it would be a good chance to go together. That led to my seeing Mr. Hart. I think it was I that saw Mr. Hart and asked him, told him that Mr. Kinkaid had told me that he was expecting to make an entry, and asking him about when, and, without going into details, which I can't remember, it resulted in Mr. Hart's making arrangements for us four to go together, and I took the team from the

(Testimony of Charles S. Kingsley.)

barn, where it was hired by Mr. Hart, and drove, I being nearer the barn than Mr. Hart, and drove it to Mr. Hart's residence, and we drove up to near where our lands laid.

Q. Had you made any arrangements for anyone to locate you before you started?

A. No. I knew, however, when I did start, that a locator was operating in the section of the country where our entries were made.

Q. Did you know who the locator was?

A. I did not know his name.

Q. Did you know the locator would be there when you got there, and would take you over the land?

A. No arrangements were made whatever. I trusted that he would be there. Filings had been made for some time in that locality, and I trusted to his being there.

Q. And did you say who the man was that located you?

A. I did not, but it was Mr. Patrick Downs.

Q. Did you have any arrangement or agreement with him as to what you should pay for locating?

A. Not until after we met him there at Mr. Kempner's, some twenty-two miles beyond Idaho City, and there I asked him what his fee would be for showing us the locations, and he told me \$25, and that was agreeable—

Q. And so you paid that?

A. I offered to pay him there, but he directed me—after coming from the land—after having viewed the land, I offered to pay him, and he directed me

(Testimony of Charles S. Kingsley.)

to pay that to a Mr. Wells,

Q. John I. Wells?

A. A gentleman who just came in here, yes, sir, that is the gentleman.

Q. And did you go to Mr. Wells?

A. I did.

Q. And the rest of the party?

A. I don't know anything about the rest of the party. I went to Mr. Wells and told him Mr. Downs had asked me to make payment to him for these locations, and gave him the amount.

Q. Was that the day you came back, or when was it?

A. Well, sir, I really couldn't say. My best recollection is that I went in and paid him at once. I had offered to pay Mr. Downs.

Q. How long after you came back did you and your wife make your filings?

A. That I could not say, but it was within a day or two or three, a short time.

Q. Did you pay Mr. Wells before you made your filing?

A. That I couldn't testify to, but my impression is that I paid him the next day after I came back.

Q. Did Mr. Downs give you a description of this property, or did you get it after you got back here?

A. No, we were over night with Mr. Downs, before we went out to the land, and myself and Mrs. Kingsley and Mr. Hart and his wife in going up had agreed that if it was possible we would select a section of land, or body containing four quarter sections, to-

(Testimony of Charles S. Kingsley.)

gether, so that we might be in a better position to use it together, or deal together in the matter, and I suggested to Mr. Downs that that was what we wished, and he said he thought he could arrange it in that way, so he took us to the tract of land which we afterwards located, and I asked him to see the corners, which he showed me, two of the corners, and we went over the land, made our examination, and I was satisfied that the entries were averagely good for that locality, and told him we would make location of those tracts.

Q. Were they contiguous?

A. All contiguous, yes.

Q. Did he show you any other but these four?

A. No, sir, except in a general way that he said that I would see that this tract was about an average of the lands there, as to the amount of timber which was upon the land, and it appeared to be that, and was satisfactory.

Q. But he took you out to a particular section that was the best he could locate you on, in accordance with your expression?

A. That was my understanding, that he had done so.

Q. Now, about the description. Did he give you the descriptions there, or was the descriptions here when you came back?

A. No, I think I took the description, made a note of the description myself, from the monuments, and corners that were there.

Q. That is your best recollection?

(Testimony of Charles S. Kingsley.)

A. That is my recollection, that I made a minute of that, so that I would have it.

Q. And then when you went to Mr. Wells to pay him this \$25, did he make an offer to buy it, or any suggestion about buying it?

A. No, sir, he did not. The only business I had with Mr. Wells was simply to pay him, as Mr. Downs had requested me to pay him, \$50 for two locations, and I think I took his receipt for the payment on account of Mr. Downs.

Q. Then you filed this at the land office, you and your wife? A. Yes, sir.

Q. Did you go together?

A. I think so. I wouldn't be sure as to that, Mr. Gordon.

Q. And you prepared the filing papers, or who prepared them? A. I prepared them.

Q. Yours and your wife's? A. Yes, sir.

Q. Then it came time for you to prove up?

A. Yes.

Q. Had any proposition or offer of sale been made, or purchase been made to you by anyone between that time and the time you proved up?

A. None whatever.

Q. Hadn't seen Mr. Kinkaid in the interim?

A. No, sir. I may have seen him—

Q. I mean with reference to this.

A. I knew Mr. Kinkaid from the Boise Basin when he was operating mines there, and I met him pleasantly from time to time, but nothing with reference to this was ever said between Mr. Kinkaid and

(Testimony of Charles S. Kingsley.)

myself.

Q. Who notified you that the time had come to prove up? Did you keep note of that, or did they notify you at the land office?

A. The date was fixed for me at the time of filing my intention to make final proof, and I made minutes of that, so as to appear there at the proper time.

Q. Was your claim held up for anything when you offered final proof?

A. I think not. In fact, I know I was given my final receipt, and later, in due course, received patent.

Q. How long after you received your final receipt were there any negotiations with reference to selling this land?

A. It was a very short time after I had my final receipt before Mr. Kinkaid saw me and asked me if I wished to sell the land, and I asked him at that time what the land was worth, and he stated the thing (not pretending to quote him exactly) but the substance of it was this, that they were able to buy forest scrip at about a certain price—I think it was some \$4 an acre—at that time, and that they would be willing to pay what it would cost to locate other lands with forest scrip. I told him at that time that that wouldn't be satisfactory to me, and that it wasn't in the market at that price; I would hold it, and expected to do better out of it than that. A number of times—

Q. (Interrupting.) Was that at Mr. Kinkaid's office?

A. No, sir, that was on the street. I never sought

(Testimony of Charles S. Kingsley.)

Mr. Kinkaid at his office. All the negotiations we ever had Mr. Kinkaid made with me with reference to the land.

Q. One thing I had forgotten. Now, from reading your statement here, I note that you used your own money with which to prove up?

A. I did, yes, sir.

Q. Do you know whether you proved up by certificate or in cash?

A. My recollection is that Mr. Garrett, who was the receiver at that time—I was very well acquainted with him, and I asked him if he would, as a personal favor, accept my check, and I think he accepted my check.

Q. You had the money in the bank?

A. Yes, sir.

Q. Do you know how long you had had it in the bank?

A. I think, as a matter of fact, so far as the money in this case was concerned, that I had arranged with the cashier of this bank to credit my account, and gave him a note. I had made investments which absorbed my funds, but I had no trouble in crediting my account.

A. This was what bank?

A. Boise City National. I had had an account with them since 1889.

Q. That is your best recollection, that you had made arrangements by giving a note, by which they would honor your check?

A. I think there is no question about that. I think I borrowed the funds from Alfred Eoff, who

(Testimony of Charles S. Kingsley.)

credited my account.

Q. Is that a national bank? A. Yes, sir.

Q. Boise City National?

A. Yes, sir, Boise City National.

Q. And you paid for your wife's at the same time? You made the arrangements, or did she pay for her own?

A. I borrowed sufficient from Mr. Eoff so that I might lend Mrs. Kingsley the necessary money to pay for her's. She had funds of her own, some of which she had received, but others of which she had not yet received, from her father's estate, as I understood, and I had told her that I would advance her the amount and let her repay me.

Q. Do you know how long this note at the bank was to run? A. Sixty days, I believe.

Q. Now, you didn't sell the first time you saw Mr. Kinkaid? A. No.

Q. Do you know how much he offered you on that occasion for each one of these pieces?

A. The first time?

Q. Yes.

A. I think he made no offer for any specific tract of land at all. He asked me if they could buy my land and I asked him what they were paying, and he told me they were paying what was equivalent to what they could buy lieu scrip for, and I think that amounted to something like \$650, as near as I can remember now.

Q. I have forgotten what you said in the first of your testimony with reference to your knowing that

(Testimony of Charles S. Kingsley.)

there was a timber locator up in that country?

A. Yes.

Q. And did you say you knew his name was Downs before?

A. No, I didn't know his name at that time.

Q. And you have used the expression that Mr. Kinkaid said they were paying the same for claims, or words to that effect, as they could purchase lieu scrip for. Did you understand who he meant by they?

A. No, I had no knowledge of that. I understood that Mr. Kinkaid—I knew he had no sufficient means himself to go into the business of purchasing land on a large scale, and if I thought anything about that it was that he was the agent for somebody who was purchasing claims.

Q. Do you remember how long that first conversation you had was after you made your final proof?

A. No, sir, I have no means of fixing the date whatever.

Q. Do you remember how long the second conversation with Mr. Kinkaid with reference to the purchase of this land was after the first?

A. No, sir, excepting that I could be pretty sure that as often as once a month from the time my final certificate was issued up to the time I finally sold he was seeking to make a purchase of that land of mine and asking me if he could buy it and buy my wife's.

Q. Then he must have spoken to you three or

(Testimony of Charles S. Kingsley.)

four, or five times?

A. I should say three or four times with reference to it.

Q. Each occasion was a casual meeting on the street?

A. The last two occasions were in my office. He came into my office, and he said "Kingsley, I will raise that price that I have offered you on the land and I will do a little better by you. I will give you \$700 (or maybe \$750)," and I said, "No, John, it isn't for sale at those figures." How long it was after that before the occasion upon which he made his final offer, I can't state, but my best impression is a matter of two weeks, or such a length of time.

Q. Then he came to your office again?

A. I don't think, however, he came specially to see me; he came to see Mr. Johnson, who occupies the office in front of mine.

Q. What Mr. Johnson is that?

A. Henry Z. Johnson; and as he passed through the office he said, "Now, Kingsley, I am going to make you a last offer for that tract up there. We have about finished our operations in that section of the country, and I will give you" (my recollection now is, the consideration, whatever that consideration in the deed is, \$800 is my recollection of it now), "I will give you and your wife that amount for that, but this is the last time we will make an offer on this proposition, because we are finishing up there and won't be doing any business in that locality." I said to him, "How long will that offer

(Testimony of Charles S. Kingsley.)

hold good, how long will you be prepared to accept it at that price?" He told me, a matter of a few days, a week or ten days, something like that. I said, "I will let you know with reference to it within that time."

Q. Did he indicate where they were going to begin, or whether they were going to begin operations somewhere else?

A. No, sir, I simply understood by that that he would cease purchasing lands in that locality. I had found as a matter of personal experience, in carrying out an idea of my own, that practically all the lands which had been located in that vicinity had been sold. I didn't know to whom, but I presumed to his company, and that was the thing that led me, finally, after consultation with Mr. Hart, to decide to make the sale of my tract of land, my timber.

Q. And in two or three days after that you came to an agreement to accept the consideration mentioned in the deed?

A. I told Mr. Kinkaid that he might prepare his deeds and I would examine them and would convey to him for that consideration.

Q. And he prepared them?

A. I think he prepared the deeds, yes, sir.

Q. And now did he come to your office and bring the deed, and pay you there?

A. He brought me the deeds to my office. I had talked with Mrs. Kingsley and with Mr. Hart with reference to this sale and it had been agreed by all of them that they would make the sale at that

(Testimony of Charles S. Kingsley.)

price, and Mrs. Kingsley was to sign my deed and I was to sign Mrs. Kingsley's deed. I don't remember now who the notary was, but I took the deed and got Mrs. Kingsley and took her before a notary, and I think then, after they were executed, that I took the deeds to Mr. Kinkaid's office, where he paid me.

Q. And you had spoken with those other people who had gone up to locate with you on that section?

A. Yes, sir.

Q. And they had agreed to sell at the same time?

A. That is as I understood it. To make myself plain on that, Mr. Hart and his wife, and myself and my wife were the only parties that were in the vehicle, and going and coming we discussed the location of this tract and had made a gentlemen's agreement and a ladies' agreement, you might say, between us that we would hold the lands together so as to be able to deal with it together after conference and consultation with each other. That was the reason I was not prepared to state to Mr. Kinkaid that I was prepared to sell that land; I wanted to carry out that agreement.

Q. Then, you went to Mr. Kinkaid's office and took the deed and he paid you the money?

A. Yes, sir.

Q. Do you know whether he paid you in check or in cash?

A. My best recollection of that is that he gave me a check for the entire amount, for both Mrs. Kingsley and mine.

(Testimony of Charles S. Kingsley.)

Q. Have you any recollection of who signed the check? Was it his personal check?

A. No, sir, I haven't a particle of recollection as to that.

Q. And you deposited that check in your bank?

A. I deposited it in my bank, yes, sir, and took credit for it.

Mr. GORDON.—We offer the timber and stone land sworn statement of Charles S. Kingsley, dated September 11, 1902, his testimony before the land office, dated December 22, 1902, the cross-examination attached, the proof papers, the deed made by Charles S. Kingsley and wife, Caro F. B. Kingsley, dated March 12, 1903, running to Horace S. Rand, the certificates of the register and receiver of the land office, dated December 22, 1902, and the patent, all relating to the southwest quarter of section 14, in township 7 north of range 8 east, Boise Meridian.

Mr. BUNDY.—The same objection as to the others.

(Charles S. Kingsley papers marked Plaintiff's Exhibit No. 38A to 38M, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Kingsley, I gather from your evidence that the allegation in this bill of complaint that you made your timber and stone entry pursuant to an agreement with certain people therein named by which you were to turn over any title you might acquire to them or to such person as they might direct is not true?

(Testimony of Charles S. Kingsley.)

A. No, sir, most assuredly not. I attempted to dispose of it to other people.

Q. And you entered it solely for your own benefit and solely for yourself?

A. That is exactly the case.

Q. And your wife's entry was in the same condition?

A. She is to testify for herself. I know nothing to the contrary. There was nothing that I ever said or did in connection with her entry—

Q. This other gentleman and his wife, Mr. Hart and his wife, so far as the sale of this land was concerned, that was negotiated by you?

A. No, sir, he made his own negotiations with Mr. Kinkaid. I simply conferred with him as to an agreement we had had that neither of us would sell until we all sold.

Q. Then so far as this bill is concerned, and the allegation that—

A. (Interrupting.) That is not true.

Redirect Examination.

(By Mr. GORDON.)

Q. You didn't know Mr. Horace S. Rand, the grantee in that deed?

A. No, sir, I didn't have any personal acquaintance with him at all.

Q. And you didn't inquire why you were selling to him?

A. No, sir, I assumed that Mr. Kinkaid was purchasing for other parties. I didn't care who he was purchasing for, and I didn't know Mr. Rand.

(Witness excused.)

[Testimony of Caro F. B. Kingsley, on Behalf of the Complainant.]

CARO F. B. KINGSLEY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Caro F. B. Kingsley?

A. Yes, sir.

Q. And this is your husband, Mr. Charles S. Kingsley, who has just testified?

A. Yes, sir.

Q. And you took up a timber and stone entry in 1902, at about the same time he did? A. Yes.

Q. I will ask you if that is your signature to the timber and stone land sworn statement (showing witness paper)?

A. That is my signature.

Q. That was dated September 11, 1902. I show you the signature of Caro F. B. Kingsley to proof testimony taken at the land office December 22, 1902, and ask you if that is your signature?

A. That is my signature.

Q. Mrs. Kingsley, the only arrangements you had for going up to look at this land and to enter it, and the conversations you had concerning it were had with your husband, weren't they?

A. Yes, sir.

Q. And he paid your location fee, he paid all the expenses connected with it?

(Testimony of Caro F. B. Kingsley.)

A. Yes, sir.

Q. And you proved up with the money that he furnished you? When you went to the land office all the money you paid your husband furnished you?

A. Well, he had it.

Q. And the arrangements made for the sale of this property were made by your husband; you didn't make any arrangements at all?

A. No.

Mr. GORDON.—We offer in evidence the sworn statement of Mrs. Caro F. B. Kingsley, dated September 11, 1902, and the testimony taken before the land office, dated December 22, 1902, the cross-examination thereto, the proof papers, the register's and receiver's certificates, dated December 22, 1902, and the deed, dated March 12, 1903, to the northwest quarter of section 14 township 7 north of range 8 east, Boise Meridian; and the patent.

(Caro F. B. Kingsley papers marked Plaintiff's Exhibit No. 39A to 39L, inclusive.)

(No cross-examination.)

(Witness excused.)

[Testimony of Lola T. Thurman, on Behalf of the Complainant.]

LOLA T. THURMAN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Thurman, you took up a claim under

(Testimony of Lola T. Thurman.)

the Timber and Stone Act in March, 1902, did you?

A. Yes, sir.

Mr. BUNDY.—We object to the introduction of any evidence relative to the claim of Mrs. Lola T. Thurman, for the reason that no land entered by Mrs. Thurman is involved in this action, not mentioned or described in the complaint, no reference being made to it, and no charge being made against it.

Mr. GORDON.—Q. I show you timber and stone land sworn statement, dated March 26, 1902, and ask you if you signed that paper, and if that is your signature to it? A. It is.

Q. I show you testimony taken before the land office, dated June 19, 1902, and ask you if that is your signature to that? A. It is.

Q. Is that your signature to the deed, dated July 5, 1902, running to A. E. Palmer?

A. Yes, sir.

Q. And is Frederic Thurman your husband?

A. Frederic Thurman.

Q. And is that his signature to the deed?

A. Yes, sir.

Q. Mrs. Thurman, who first spoke with you about taking up a timber and stone claim?

A. My husband.

Q. You went up to view this land before you located, didn't you? A. Yes, sir.

Q. Do you remember who was of the party that went with you? A. To the land?

Q. Yes.

(Testimony of Lola T. Thurman.)

A. You want the names of all?

Q. Yes, that you can remember?

A. Well, my husband was with me, and Mrs. Brookhart.

Q. Mrs. Della C. Brookhart?

A. I think that is her name; and Arthur Brookhart, and I think a man by the name of Downs showed us the land.

Q. Did Mr. Downs go up in the wagon with you, or did you meet him after you got there?

A. He went up in the wagon with us.

Q. Do you know who arranged that party?

A. No, I don't.

Q. Did you know Mr. and Mrs. Brookhart before that?

A. Yes, sir.

Q. Do you remember whether or not Mr. Downs was paid anything for locating you?

A. I don't remember.

Q. Did he give you a description of the land while you were up there?

A. I don't think so.

Q. Did he tell you where to go to get the description or to have your papers made out?

A. Well, I don't remember; I was with my husband and I don't remember anything that he told me.

Q. Do you remember how long after you returned from viewing this land you made your filing in the land office?

A. I don't just remember, but it seems to me like it was in July.

(Testimony of Lola T. Thurman.)

Q. I mean after you viewed the land, how long was it before you went to the land office and made your entry, first filing?

A. I don't remember.

Q. Was it the next day, or a week, or—

A. (Interrupting.) Well, I don't remember.

Q. Can't remember? Do you remember having met Mr. John I. Wells?

A. Well, I think that he was the one that done the writing if I am not mistaken.

Q. You mean that wrote this first paper that you said you had signed? A. Yes, sir.

Q. Do you know where it was that he wrote that paper? Was it at his office or the land office, your home, or where? A. At his office.

Q. Was there any understanding at the time you made this entry as to whom you were to convey this property to? A. No, sir.

Q. Do you know where the money came from with which you made your final proof?

A. My husband furnished me the money.

Q. Do you know where he got it?

A. I don't.

Q. Do you know whether he had it in the bank or whether he borrowed it?

A. I don't think he borrowed it.

Q. Did your husband have a bank account in the city here?

A. Not at that time I don't think.

Q. You remember the day you made your proof,

(Testimony of Lola T. Thurman.)

do you, at the land office, when you paid in about \$400?

A. Well, I don't remember whether it was in June or July.

Q. I mean you remember the occasion. You remember the circumstance of your going there and making your proof? A. Yes, sir.

Q. And did you have the money with you at that time? A. My husband had the money.

Q. Had you and your husband talked over about having this money before you went up to make entry?

A. He told me he would furnish me the money.

Q. That was before you went?

A. Yes, sir.

Q. What was your husband's business. Mrs. Thurman?

A. He has followed mining more than anything else.

Q. Did he own a mine?

A. No, sir, just worked in mines.

Q. Was he a mining engineer?

A. No, I say just worked as a common laborer.

Q. Then did anyone after you had made your final proof offer to purchase this land from you? (Witness pauses.) Can you answer that? (Witness pauses.) You sold it, didn't you, Mrs. Thurman? A. Yes, I sold it.

Q. Who did you see with reference to selling it?

A. Do you want the man's name that we sold it to?

(Testimony of Lola T. Thurman.)

Q. Yes.

A. Palmer I think was his name.

Q. Did you ever meet Mr. Palmer, Mrs. Thurman?

A. I don't remember; I was with my husband, and I don't remember.

Q. Did you meet Mr. L. M. Pritchard in this transaction? A. Yes, sir.

Q. Did you have any talk with Mr. Wells about this after he drew your papers? Did he come to see you about it? A. Not that I remember.

Q. How did you get down to Mr. Pritchard's office? Did he come to see you or did you go there?

A. I went to his office.

Q. Did you go with your husband?

A. Yes, sir.

Q. And who was at Mr. Pritchard's office when you got there? A. I don't remember.

Q. Was Mr. Wells there? Do you remember that? A. I don't.

Q. And you sold it while you were at Mr. Pritchard's office? A. Yes, sir.

Q. You say you sold it to Mr. Palmer. Was any reason given why it wasn't sold to Mr. Pritchard, or did you understand Mr. Pritchard was buying it for Mr. Palmer, or didn't you have any understanding at all about it? (Witness pauses.) Can you answer that?

A. I don't remember. I know that Mr. Pritchard done the writing.

Q. He prepared this deed?

(Testimony of Lola T. Thurman.)

A. Yes, sir.

Q. And was anything said about money while you were at his office? A. Not while I was there.

Q. Did you get any money from this land?

A. Yes.

Q. How much?

A. It seems to me like it was \$200.

Q. Did you get it there that day you signed the deed? A. My husband got it.

Q. You saw him get it?

A. He got the money.

Q. And did your husband sell his at the same time? A. Yes, sir.

Q. And do you know whether he got the same amount for his that you did for yours?

A. I think so.

Q. Did this Mr. Palmer—did you know whether he lived here or not? A. No, I don't know.

Q. Did you ever meet him?

A. I don't remember.

Q. Do you know whether any such person lives in Boise now as Mr. Palmer?

A. (After a pause.) I don't know.

Q. Did you ever hear of anyone by that name living here?

A. (After a pause.) I don't remember.

Q. Did you ever sign any other deed but this one, Mrs. Thurman? Concerning this property?

A. (After a pause.) I don't think so.

Q. Were you ever asked to sign another deed?

A. I don't think so.

(Testimony of Lola T. Thurman.)

Q. Do you know?

A. (After a pause.) I don't.

Q. You don't know whether you were asked to sign another deed or not?

A. (After a pause.) I don't remember.

Q. Did you sign a deed with your husband besides this one, when you and he both got your money?

A. I said that I didn't remember.

Mr. KEIGWIN.—Q. Do you remember whether you signed one or two deeds on that occasion, Mrs. Thurman?

A. No, I don't.

Mr. GORDON.—Q. Did you and your husband own any other property in Boise at that time?

A. No, sir.

Mr. GORDON.—We offer in evidence the sworn statement of Mrs. Lola T. Thurman, dated March 26, 1902, her testimony before the land office, dated June 19, 1902, the cross-examination thereto, the final proof, the register's and receiver's receipts, dated June 19, 1902, and the deed, dated July 5, 1902, made by Frederic Thurman and Lola T., his wife, to A. E. Palmer, to the southwest quarter of section 20 township 6 north of range 6 east, Boise Meridian.

Mr. BUNDY.—Does that include her husband's entry?

Mr. GORDON.—No, I am going to offer that too.

Mr. BUNDY.—We will admit that they are the files from the land office.

(Lola T. Thurman papers marked Plaintiff's Exhibit No. 40A to 40M inclusive.)

(Testimony of Lola T. Thurman.)

Mr. GORDON.—I offer the deed, dated July 5, 1902, to the northeast quarter and the southwest quarter of section 20, township 6 north of range 6 east, Boise Meridian.

We offer from the land office files the timber and stone sworn statement, dated March 26, 1902, signed by Frederic Thurman, the testimony of Frederic Thurman, dated June 19, 1902, the cross-examination, and the proof papers of Frederic Thurman, and the register's and receiver's receipts or certificates, dated June 19, 1902, to the northeast quarter of section 20, township 6 north of range 6 east, Boise Meridian, and the patents in the two cases.

(Frederic Thurman papers marked Plaintiff's Exhibit No. 41A to 41K inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. I take it, Mrs. Thurman, that you are now a widow? A. Yes, sir.

Q. When did Mr. Thurman die?

A. He has been dead four years, he died four years ago the 8th of February.

Q. The first one who spoke to you about going up was your husband? A. Yes, sir.

Q. What did he say to you? That you could enter a piece of land and then prove up and sell it at a profit and make a little money?

A. No, sir, he did not.

Q. What did he say?

A. He told me I could take up land.

Q. All the arrangements, as I understand, were

(Testimony of Lola T. Thurman.)

made by your husband? A. Yes, sir.

Q. You personally had nothing to do with seeing or looking after the money to pay any of the expenses? A. No, sir.

Q. Locating fee or anything else?

A. No, sir.

Q. And when you came to prove up on the land your husband arranged for the money for himself and for you as well? A. Yes, sir.

Q. Do you know where your husband borrowed the money to pay for the land?

A. No, sir, I do not.

Q. Never had any talk with him on that subject?

A. No, sir.

Q. And when you and your husband went to the land office to pay in the money he had the money with him? A. He did.

Q. You personally didn't pay in any money?

A. No, sir.

Q. Then after you had proved up there was some negotiations which finally resulted in your selling the land, as I understand? A. Yes, sir.

Q. And those negotiations were carried on entirely by your husband? A. Yes, sir.

Q. You don't know what talks he had with anybody, or the price or anything else?

A. I do not.

Q. You said, Mrs. Thurman, that you got about \$200. Do you mean by that that you received \$200 over and above what it cost you, the \$200 actually came to you, did it? A. I think so.

(Testimony of Lola T. Thurman.)

Q. So that represented \$200 as you understood it over and above what the land cost?

A. Yes, sir.

Q. This man that you speak of as Mr. Pritchard, was the man that drew the papers, and as I understood it paid the money. Did you see him pay the money? A. I don't think I did.

Q. You don't know whether he paid your husband just \$200 and kept out the money your husband had borrowed or whether he paid \$600?

A. I do not.

Q. So when you say \$200, you mean that was the profit you made in entering and selling it. That is correct, is it not? A. Yes, sir.

Q. So far as you are concerned, Mrs. Thurman, did you ever have any arrangement or agreement of any kind with anybody that you would sell this land as soon as you got title to it? A. I did not.

Q. At the time you made your original filing in the land office and the second time you were asked certain questions. You answered those questions truthfully to the best of your knowledge?

A. Yes, sir.

Q. You intended to answer them truthfully?

A. Yes, sir.

Q. So that they were true to the best of your knowledge? A. Yes, sir.

Q. It is stated in the bill of complaint in this lawsuit we are trying here, Mrs. Thurman, that you made your timber and stone entry under some kind of agreement by which you had promised in advance

(Testimony of Lola T. Thurman.)

that as soon as you got title you would turn it over to some other people. Is that true or false?

A. I never made no agreement at all.

Q. Did you have any purpose, Mrs. Thurman, in entering this land except to get it and sell it and make what you was entitled to make out of it in a lawful and proper way; did you have any other purpose? A. No, sir.

Q. And you weren't acting for anybody else when you did? A. No, sir.

Q. And the entry was made and proved up on and finally sold for the exclusive benefit of yourself and your little family, was it not? A. Yes, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mrs. Thurman, do you remember how much money was paid to you by Mr. Pritchard on the day when you executed this deed?

A. The money was paid to my husband.

Q. Wasn't there any of it paid into your hands?

A. No, sir.

Q. Did your husband turn it over to you?

A. Yes, sir.

Q. How much did he turn over to you?

A. I said I thought it was \$200.

Q. You got that from your husband, do I understand you right? A. Yes, sir.

Q. After you left the office? A. Yes, sir.

Q. Did you see Mr. Pritchard pay this money over to Mr. Thurman? A. No, I didn't.

Q. Did you go with Mr. Thurman to the office?

(Testimony of Lola T. Thurman.)

A. I was in the office part of the time with Mr. Thurman.

Q. Did you come away with him? A. I did.

Q. You saw the money paid to Mr. Thurman, did you not? A. I don't remember.

Q. Didn't you see the money paid to him?

A. I don't think I did.

Q. And you don't know how much he received?

A. I don't know.

Q. But he told you that he got \$200, is that correct?

Mr. BUNDY.—We object to that as a misstatement of the witness' evidence.

Mr. KEIGWIN.—Q. Now, Mrs. Thurman, since these gentlemen have taxed me with undertaking to misstate your evidence, allow me to refresh my memory, and you will correct me if I am wrong. I understood you to say, in response to Mr. Gordon's question, that you got \$200 and that Mr. Thurman got \$200. Now, am I right or wrong? Mr. Stenographer will you repeat the question?

Q. (Last question read by stenographer.)

A. I think I have answered that question.

Q. Well, I see no objection to your answering it again, Mrs. Thurman. Am I right or wrong in my understanding of your testimony?

Mr. FRASER.—I object to that as incompetent, irrelevant and immaterial. The witness can have no knowledge of what your understanding is.

Mr. KEIGWIN.—I have stated my understanding, and I have asked the witness if I am correct in

(Testimony of Lola T. Thurman.)

my understanding. Please read the question, Mr. Stenographer.

(Question read by stenographer.)

The EXAMINER.—How was that, witness? Did you get \$200 and did Mr. Thurman get \$200 also? Let the witness answer her question.

Mr. GORDON.—If the Court please, I would like to suggest that the question which was asked and which she answered me was, how much her husband got.

The EXAMINER.—My question is a simple one, and she can answer it, of course, if she remembers. You can say so, witness, if you don't remember.

A. I said I got \$200.

The EXAMINER.—You think you got \$200 and he got \$200?

Mr. FRASER.—I object to that question being asked, and to the Examiner asking the question, as to what she thinks he got.

Mr. BUNDY.—I don't think there is any dispute here at all. I think the witness has told us all she knows about it.

Mr. KEIGWIN.—I object to any suggestion by counsel. We are waiting for the witness to answer the Examiner's question.

Mr. FRASER.—I object to the Examiner asking any questions at all in this hearing.

The EXAMINER.—The question is a simple one, witness, and there is no disposition on the part of these gentlemen to catch you at all, and you can answer the question in your own way, whether you got

(Testimony of Lola T. Thurman.)

\$200 and your husband got \$200. There is no disposition on the part of any of these gentlemen to catch you or anything of that sort. They just want a simple answer.

Mr. FRASER.—The witness has stated—

Mr. KEIGWIN.—I object to any suggestions on the part of counsel.

The EXAMINER.—There is so much talk on the outside that the witness is confused, I think, and if you will let her have time she will answer it if she remembers. If you don't recollect, Mrs. Thurman, you can say so.

A. I know I got \$200 and I supposed that he would get the same.

Mr. KEIGWIN.—Q. Now, reverting to my original question. Did Mr. Thurman tell you that he got \$200? A. I don't know that he did.

Q. You don't know whether or not he told you how much he got? A. I said I didn't.

Q. That isn't quite what you said before, Mrs. Thurman. You said you didn't know. You saw the money counted out in Mr. Pritchard's office, didn't you? A. I don't remember.

Q. Do you remember the day on which you first went to the land office to make your application for this land? A. I don't.

Q. Do you remember going to the land office?

A. I do.

Q. You remember that you went to the land office?

A. I remember I went to the land office, but I

(Testimony of Lola T. Thurman.)

don't remember what day it was.

Q. You remember the fact that you went there?

A. Yes, sir.

Q. Did you know the register of the land office, Mr. King?

A. Do you mean was I acquainted with him?

Q. Yes. A. I wasn't.

Q. Were you introduced to him by anybody?

A. I don't remember.

Q. Do you remember whether you took anybody along with you to identify you to Mr. King?

A. I don't remember that.

Q. Do you remember that Mr. John I. Wells went with you and introduced you to Mr. King?

A. I remember of being at Mr. Wells' office, but I don't remember his introducing me.

Q. You don't remember his going to the land office with you? (Witness pauses.) I don't get your answer. A. I said I didn't remember.

Recross-examination.

(By Mr. BUNDY.)

Q. Now, Mrs. Thurman, you understood that you got \$200 over and above what the land cost you, didn't you? A. That is what I understood.

Q. And you supposed that your husband got \$200 over and above what it cost him?

Mr. KEIGWIN.—Counsel for complainant object to these questions on two grounds, first, that they are a repetition of what has already been gone over and exhausted, and, secondly, that the form of the question is suggestive.

(Testimony of Lola T. Thurman.)

Mr. BUNDY.—Q. You understood, Mrs. Thurman, as I understand, that your husband and you knew at that time that the land was going to cost you \$400 and some odd dollars?

Mr. KEIGWIN.—I object to that on the grounds already stated, and upon the further ground that the witness has manifested a hostile attitude toward the complainant, and it is therefore incompetent for the counsel for the defendants to lead her or to suggest answers to their questions in the manner in which it is being done.

Mr. BUNDY.—Q. Mrs. Thurman, at the time you started to enter this land, you understood, did you not, from your husband and elsewhere, that it would cost in the neighborhood of \$400 to get the land?

A. I understood it would cost something, yes.

Q. And you understood that your husband had made provision to pay for your land and his, just how, I think you said you didn't know. Is that right?

A. Yes, sir.

Q. Then when you got the \$200 paid over to you by your husband, did you understand that the money which had been borrowed for you to pay for your land had been taken out and paid back, and that was the profit you made on it? That was your understanding, was it not?

Mr. KEIGWIN.—Same objection.

A. I don't remember how it was.

Q. You understood, did you not, Mrs. Thurman, when you got this \$200 that that represented the

(Testimony of Lola T. Thurman.)

profit you had made on your land?

Mr. KEIGWIN.—Same objection.

Mr. BUNDY.—Q. Is that right?

A. I understood that is what I got.

Q. You understood that is what you got for the land after the bills had been paid, didn't you? You didn't understand that you had to go out and pay out any of that \$200 to pay for the land?

A. No, I did not.

Q. You understood that the land had been paid for and that was \$200 for you? A. Yes, sir.

Q. And you understood that your husband's land had been paid for and there was a profit of \$200 to him?

A. I supposed that was what he would get.

Q. But the point we are trying to get at, Mrs. Thurman—

Mr. KEIGWIN.—I object, if the Court please, to the statement by counsel of the purpose of their cross-examination, on the ground that the witness has already manifested a hostile disposition toward the complainant. I simply state the fact, and desire to go on record that this witness has manifested a hostile disposition toward the party calling her.

Mr. BUNDY.—So have all the other witnesses that you have called. All witnesses that don't come up here and perjure themselves are supposed to be hostile to the Government.

Mr. KEIGWIN.—I object to the statement of counsel as being an utterly unwarranted imputation against counsel for the complainant, and insist that

(Testimony of Lola T. Thurman.)

there is nothing in this record that shows any disposition on the part of counsel for complainant to encourage any perjury. I object to that as being utterly unwarranted by this record.

Mr. BUNDY.—Q. After you got your \$200 and supposed your husband got his \$200 you didn't understand that you had to use that to pay the Government or any of the bills, did you?

A. No, I didn't understand that.

Q. You understood that belonged to you of right, did you not, as the profit on your transaction, and you had a right to keep it. That is a fact, isn't it?

A. Yes, sir.

Q. Mrs. Thurman, you are holding in your arms your little child, are you not, and I imagine from your appearance that this is perhaps your first time on the witness-stand, isn't it, Mrs. Thurman?

A. Yes, sir.

Q. And in answering these questions you have been a little embarrassed and a little frightened, haven't you, or have you?

Mr. KEIGWIN.—I object to that.

Mr. BUNDY.—Isn't that a fact, Mrs. Thurman?

A. I don't think—(answer not completed).

The EXAMINER.—I think that is all with this witness, gentlemen.

(Witness excused.)

**[Testimony of George T. Ellis, on Behalf of the
Complainant.]**

GEORGE T. ELLIS, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is George T. Ellis? A. Yes.

Q. Mr. Ellis, what is your occupation?

A. I am a farmer.

Q. What was your occupation in September, 1902? A. I was farming and running sheep.

Q. Where do you reside?

A. Down the valley.

Q. How far from here? A. Twelve miles.

Q. Where did you reside in 1902?

A. I resided down the valley twelve miles from here.

Q. You made a timber and stone entry in September, 1902, did you? A. Yes, sir.

Q. I show you sworn statement under that act, dated September 19, 1902, and ask you if that is your signature to it? A. Yes, sir.

Q. I show you testimony of claimant, taken before the land office January 22, 1903, and ask you if that is your signature. A. Yes.

Q. I show you deed dated February 13, 1903, signed George T. Ellis, and Emma C., his wife, to Horace S. Rand, and ask you whether or not that is your signature and your wife's signature to the deed.

A. It is.

(Testimony of George T. Ellis.)

Q. Who was the first person that spoke with you about making an entry under the Timber and Stone Act? A. Well, I don't remember.

Q. Well, what occasioned you to make an entry under the Timber and Stone Act?

A. I understood there was timber to be located.

Q. Who did you understand that from?

A. Several different parties.

Q. Name some of them?

A. Jim Belk was one.

Q. And where did he live?

A. He lived in Boise at that time.

Q. Did you meet him in Boise or did he go down in the valley to tell you that?

A. At the time he talked about it I don't know whether he was in town or at the ranch.

Q. What did he say about it?

Mr. BUNDY.—We object to that as incompetent, irrelevant, and immaterial, and asking for hearsay evidence.

A. He said that there would be timber open to location some time during that fall.

Q. That was in what fall?

A. It was in the fall we located. We talked about it some time during the early spring.

Q. Well, did you go and locate then, or did you think longer about it?

A. We didn't locate until the fall.

Q. You say we; who do you mean by we?

A. There was a party of us went up together. I and him went up together.

(Testimony of George T. Ellis.)

Q. You and Mr. Belk? A. Yes.

Q. Who else?

A. I think one man was named Twogood, and one was named Bayhouse.

Q. And you went up to view this land, did you?

A. Yes, sir.

Q. Where did you start from?

A. We started from Boise.

Q. Who went with you?

A. Mr. Belk, Mr. Bayhouse, and Mr. Twogood.

Q. Did you come up here from your home to start? A. Yes, sir.

Q. Just for that purpose? A. Yes, sir.

Q. Is that what I understand you?

A. Yes, sir.

Q. You came up for that purpose?

A. Yes, sir.

Q. Who arranged for the party to go?

A. Well, Mr. Belk told me about it; he told me when to be ready to go.

Q. And the day you started, where did you meet the people that were going with you?

A. Met them here in town.

Q. Whereabouts?

A. At his home out here on Fort street, I think.

Q. You went to his house in a conveyance?

A. Yes, sir.

Q. Now, was anything told you about what you could get out of it for entering one of these claims?

A. No, sir.

Q. Had you been told how much the land was be-

(Testimony of George T. Ellis.)

ing sold for?

A. I knew how much some of them had got.

Q. Who did you know that had sold?

A. I don't know that I could say any of them now; I don't remember.

Q. Do you remember the name of any person that told you they had entered a piece of timber land and sold it?

A. No, sir.

Q. And did you have any idea or knowledge of what these timber claims would bring?

A. No, I don't know as I did.

Q. Did you know how much it would cost you to pay for this land, and to locate, and what the expenses would be?

A. Yes, sir.

Q. Who told you that?

A. I don't know as anybody told me. I knew what the land cost, \$2.50 an acre, from the Government.

Q. Nobody told you that?

A. I don't think they did; I don't remember.

Q. Was any arrangement made about someone to locate you there?

A. I heard that Mr. Downs was up there locating.

Q. You heard that before you started?

A. Yes, sir.

Q. Who told you that?

A. I don't know—one of the party; I don't know which one.

Q. Did you know how much you were to pay the locator?

A. Why, I think it was \$20.

(Testimony of George T. Ellis.)

Q. You knew that before you started?

A. Yes, sir.

Q. Who did you pay that \$20 to?

A. I paid it to Mr. Downs.

Q. When you went up there? A. Yes, sir.

Q. Did you know Mr. John I. Wells?

A. No, I don't know him.

Q. Do you know him now?

A. I don't know that I would know him if I see him. I don't know that I ever met him.

Q. Did you know Mr. Kinkaid?

A. Yes, sir.

Q. When did you meet him?

A. I met him shortly after we came back and located.

Q. Where did you meet him?

A. Met him in his office.

Q. Did you go to his office alone?

A. I went there alone.

Q. Who directed you to his office?

A. I don't remember; I think it was Twogood or Bayhouse; I got those two fellows mixed.

Q. Where did you go to locate this land—what town?

A. We went up above Banner, or above Idaho City I should say, upon the Crooked River.

Q. And how far from Idaho City was this land?

A. About twenty miles I think above Idaho City.

Q. Where did you stop when you got there?

A. Stopped at Mose Kempner's.

Q. And you met Mr. Downs there?

(Testimony of George T. Ellis.)

A. Yes, sir.

Q. Did he locate you the same day you arrived?

A. I think he did.

Q. Did he take you all in a party to locate you or did he take you separately?

A. We all went out together.

Q. Did he show you one piece of land, and say that is the piece you will be located on, or did he show you one or a dozen and ask you which you would rather have?

A. He showed me one piece.

Q. Did he show the others a piece?

A. Yes, sir.

Q. And the piece he showed you was the one you located on? A. Yes, sir.

Q. Did he give you a description of it?

A. No, he didn't give it to me.

Q. Who did he give it to?

A. He gave it to one of the other parties.

Q. One party had the descriptions of all?

A. Yes, sir.

Q. Did he give any direction as to where he should take them? A. No, sir.

Q. And where did you see them next?

A. In Kinkaid's office.

Q. Who told you to go to Kinkaid's office?

A. I don't know who told me to go there.

Q. Did Mr. Downs tell you to go there?

A. No, sir.

Q. Was it Twogood?

(Testimony of George T. Ellis.)

A. It might have been either Twogood or Bayhouse.

Q. It was one of the parties that was with you that told you to go to Pritchard's office?

A. Yes, sir.

Mr. KEIGWIN.—You said Kinkaid's office, didn't you? A. Yes, sir.

Mr. GORDON.—Q. And how long did it take you to come back?

A. Why, it took us a little over a day, I think.

Q. And do you remember what day you arrived at Boise on your return?

A. We arrived at Boise late that evening, five or six o'clock.

Q. Did you go the next day to Kinkaid's office?

A. No.

Q. When did you go?

A. It was several days afterwards—I don't remember now.

Q. When you got to Kinkaid's office who did you see there—Mr. Kinkaid? A. Yes, sir.

Q. Anyone else? A. I don't remember.

Q. Was Mr. Twogood there? A. No, sir.

Q. Mr. Bayhouse? A. No, sir.

Q. You went alone? A. Yes, sir.

Q. Do you remember who it was told you where Mr. Kinkaid's office was?

A. I think either Bayhouse or Twogood—I don't know which.

Q. And now, when you went to Mr. Kinkaid's office what did you say to him?

(Testimony of George T. Ellis.)

A. I went there and asked him for a description, I believe.

Q. What did he say?

A. He got the description for me.

Q. And did he prepare this paper for you?

A. Yes, I think he did.

Q. Did he charge you anything for preparing the paper?

A. I don't remember whether I paid him anything or not.

Q. What is your best recollection—that you did or that you didn't?

A. I don't think I paid him anything at the time.

Q. Did you know at that time that Mr. Kinkaid was buying timber land?

A. No, sir, I didn't.

Q. Did he say anything to you about buying timber claims?

A. He did not.

Q. Was anything said by any of these people where you could get your money to prove up with?

A. No, sir.

Q. You say that you were a farmer at that time?

A. Yes, sir.

Q. Were you living on your own farm then?

A. Yes, sir, I was.

Q. You owned it at that time, did you?

A. I owned an interest in it.

Q. What do you mean by that?

A. Why, I and Mr. Belk was in partners on the ranch and sheep.

Q. And you owned this property, or did you lease it?

A. I owned it.

(Testimony of George T. Ellis.)

Q. Owned it? A. Yes.

Q. You owned half of it and Mr. Belk owned half of it? A. Yes, sir.

Q. Do you still own that farm?

A. I ain't sure whether the deed had ever been transferred at the time or not, but I was in full partners with him at that time. I don't remember whether he had signed the deed over to me at that time.

Q. Mr. Belk had owned the farm, and, as I understand, you bought half of it? A. Yes, sir.

Q. Do you remember when the deed transferring that to you was made?

A. No, I don't remember now.

Q. Was it made about that time or a year or two after that?

A. No, it was two or three years after that, I think.

Q. And after Mr. Kinkaid prepared this paper for you did you go to the land office with it?

A. Yes, sir.

Q. Did you have anyone to identify you at the land office, or did you know Mr. King, the register?

A. I don't remember whether I had anybody—I think Mr. Kinkaid identified me.

Q. He went to the land office with you?

A. Yes, sir.

Q. Do you remember how much you paid at the land office when you filed this paper?

A. I think it was \$12.50.

Q. Anything else—was there \$7.50?

(Testimony of George T. Ellis.)

A. \$12.50 if I remember right—I don't just remember now.

Q. Then after you filed this paper you went back to the farm, did you? A. Yes, sir.

Q. How long was it then before you went to the land office again?

A. I don't remember just how long it was.

Q. Was it two months, or how long was it?

A. It was three or four months.

Q. How did you know the time to go?

A. I don't just remember—I think I had an Idaho City—I think I had a paper with the advertisement giving the dates we was to prove up.

Q. And you went to prove up?

A. Yes, sir.

Q. Now, where did you get the money with which to prove up? A. I got it at the bank.

Q. Which bank?

A. The Capital State Bank.

Q. Did you do a banking business there?

A. We did.

Q. How long had you been banking at that bank?

A. I think we had had an account there for probably a couple of years at that time.

Q. Did you have money on deposit at that bank at that time? A. I had some there, yes.

Q. Do you know how much it was?

A. No, I don't.

Q. Have you any idea as to how much it was?

A. No, I have no idea just how much it was.

Q. Did you borrow that money there or did somebody leave it at the bank for you?

(Testimony of George T. Ellis.)

A. No, sir, I borrowed the money there.

Q. Who did you make negotiations to borrow it with?
A. Mr. Neal.

Q. That was the cashier? A. Yes, sir.

Q. And you gave a note?

A. Yes, sir, I gave a note.

Q. Did you give any security? A. No, sir.

Q. Was the note endorsed?

A. No, sir, it wasn't.

Q. How long was that note to run?

A. I don't remember how long it was drawn up for now?

Q. What is your best recollection?

A. I couldn't say.

Q. Was it a sight, pay on demand, or was it a sixty day note?

A. It might have been drawn on demand, I don't remember.

Q. Do you remember how much you borrowed upon that occasion? A. \$425.00.

Q. And did they give it to you in cash?

A. Yes, sir.

Q. And you took that \$425 to the land office, did you? A. Yes, sir.

Q. Did you go anywhere except from the bank to the land office? I mean, did you go directly from the bank to the land office? A. Yes, sir, I did.

Q. And did anyone go with you?

A. No, sir, I don't think they did.

Q. Was Mr. Kinkaid with you? A. No.

Q. And you paid that money, that \$400 and

(Testimony of George T. Ellis.)

some odd dollars you got from the bank into the land office, did you? A. Yes, sir.

Q. And they gave you a receipt for it?

A. Yes, sir.

Q. And did you take that receipt to anyone directly after you left the land office?

A. No, sir, I don't think I did.

Q. How long after that did you see Mr. Kinkaid again?

A. I think it was three or four weeks after that.

Q. It wasn't the same day or the next?

A. No, sir.

Q. Where did you see him then?

A. I see him in his office.

Q. And why did you go to his office on that occasion?

A. I heard that he was selling some timber—I heard that he was making sales of timber.

Q. Sales or buying?

A. No, I didn't hear he was buying—I heard he was selling—I heard that he was selling timber.

Q. Selling for other parties? A. Yes, sir.

Q. And then you went to him to see if you could sell it? A. Yes, sir.

Q. Now, how long before you went there was it that you heard he was selling timber?

A. How long before I went there?

Q. Yes.

A. Well, I think it was a couple of weeks.

Q. When you were in his office at that time he didn't tell you he was selling timber for entrymen?

(Testimony of George T. Ellis.)

A. No, sir.

Q. Never said anything about buying or selling?

A. Never said nothing.

Q. Had anybody down to the time you went there, or several days before, told you that you could sell it there? A. No.

Q. Now, whose office was this?

A. That I went to?

Q. Yes. A. Kinkaid's, I think.

Q. What did you say when you went into Mr. Kinkaid's office?

A. Well, I spoke to him about timber.

Q. Was anyone there besides Mr. Kinkaid?

A. Not that I remember of.

Q. What did he say to you?

A. He told me he could sell it.

Q. For how much?

A. I think it was \$800 he told me he could get for it.

Q. Did you have any of your papers with you at that time? A. I don't think I did.

Q. Did you have your receipt with you at that time?

A. I might have had my receipt—I don't remember.

Q. Did you show that to him?

A. I think so.

Q. Did you leave it with him?

A. Not at that time.

Q. Did you come to a conclusion whether you would accept his offer at that time?

(Testimony of George T. Ellis.)

A. Not at that time, I didn't.

Q. Well, what did you do? Did you tell you wouldn't take it?

A. I told him I would see about it, consider it.

Q. And then you went away? A. Yes, sir.

Q. How long after that was it that you saw Mr. Kinkaid again?

A. It was only a few days after that.

Q. Did you go back? A. Yes.

Q. Did you take your receipt with you at that time? A. Yes, sir.

Q. And left it? A. Yes, sir.

Q. And did he buy the land at that time?

A. Yes, sir.

Q. How much money did he give you?

A. He gave me \$800, or he gave me part of it at that time. I think he gave me \$400 or \$500 at the time we made the trade.

Q. Let me understand you. How much money did he—did he give it in cash or check?

A. I think he give me part of it in cash and part in check—I don't remember.

Q. How much was in cash that you received on that occasion?

A. I couldn't say just how much it was.

Q. I mean was it \$50 or \$100?

A. Three or four hundred—something like that—about half of it.

Q. Do you know whether he gave you the check at the same time, or later?

A. No, he give me the check later.

(Testimony of George T. Ellis.)

Q. Was that the time you gave him the receipt?

A. I left the receipt with him before—when he made the first payment.

Q. That is what I mean. What was the first payment?

A. Something like two or three hundred.

Q. That was the first payment?

A. Yes, sir.

Q. Was that after you made your final proof?

A. I think it was two or three weeks after I made final proof.

Q. Then did he tell you to come back there later?

A. I had to bring my wife up and sign the paper.

Q. You didn't sign the deed at that time, did you?

A. At the time I received payment I signed the deed.

Q. The first time he gave you any money, I understood you to say last, was between two and three hundred dollars, and you left your receipt with him at that time. Is that right?

A. I think so, yes.

Q. And on that occasion did you sign a deed, or did you sign a deed later, when your wife was with you? A. I signed the deed at that time.

Q. Was that deed prepared when you got there?

A. I don't remember as to that.

Q. Did you meet Mr. Louis M. Pritchard there on that occasion?

A. I met somebody, but I think he was there.

Q. Do you know Mr. Pritchard?

(Testimony of George T. Ellis.)

A. I know him now. I had never met him before.

Q. And now, which time was it you signed the deed?

A. The first time, at the time I received my first payment.

Q. And how long after that was it that you went back again with your wife?

A. It was a few days after that, probably four or five days.

Q. Then, it was that he gave you the balance of the money?

A. Yes, sir, he give me, I think, a check for the balance. I don't remember whether I got the check the first time or the last.

Q. Whose check was that?

A. I think Kinkaid's.

Q. What did you do with that check?

A. I took it and got it cashed.

Q. Where did you get it cashed?

A. I don't remember now.

Q. Did you get it cashed in a mercantile store, or did you take it to a bank?

A. I took it to the bank and got it cashed.

Q. Which bank did you take it to?

A. I don't remember.

Q. Did you take it to your own bank?

A. No, sir.

Mr. KEIGWIN.—Q. Was it Kinkaid's personal check?

(Testimony of George T. Ellis.)

A. I think it was—I don't remember—I couldn't say—

Mr. GORDON.—Q. Did you know Mr. Horace S. Rand? A. No, sir.

Q. Did you ever sign any other deed but the one, or were you ever requested to make another deed?

A. No, sir.

Mr. GORDON.—We offer in evidence the sworn statement of George T. Ellis, dated September 19th, 1902, his testimony before the land office on final proof, dated January 22, 1903, the cross-examination, the register's and receiver's certificates, dated January 22d, 1903, and the deed of George T. Ellis and wife Emma C., dated February 13, 1903, and the patent, to the southeast quarter of section 12, township 7 north of range 8 east, Boise Meridian.

(George T. Ellis papers marked Plaintiff's Exhibit No. 42A to 42H inclusive.)

Q. Did your wife ever take up one of these claims? A. No, sir.

Q. How long had you been married when you took up this claim?

A. Why, about six or eight months—something over a year.

Q. Do you remember the day of the month and the year when you were married?

A. I don't remember what year.

Q. How many years have you been married?

A. We have been married about seven years, going on seven years.

Q. Were you married here in Boise?

(Testimony of George T. Ellis.)

A. Yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Ellis, I call your attention to the first paper you signed and filed in the land office, under date September 19, 1902, in which statement you say, among other things, "that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement was absolutely true at the time you made it, wasn't it? A. Yes, sir.

Q. And at the time you made your timber and stone entry you had made no agreement of any kind or character with any person, firm or corporation, by which they were to get any interest in the land you were acquiring or the timber on that land, had you?

A. I had not.

Q. At the time you made your final proof and paid the Government \$2.50 an acre, you had not entered into any agreement of that kind?

A. No, sir.

Q. It is alleged in the bill of complaint in this lawsuit we are trying that you made your timber and stone entry pursuant to an agreement with the Barber Lumber Company, and a lot of other people, by which agreement you promised and agreed to turn it over to them as soon as you got title. Is

(Testimony of George T. Ellis.)

that allegation true or false?

A. It is false.

(Witness excused.)

**[Testimony of Emerson S. Sensenig, on Behalf of the
Complainant.]**

EMERSON S. SENSENIG, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Sensenig, what is your occupation?

A. Artificial ice and cold storage business.

Q. Where do you reside? A. Boise.

Q. How long have you resided here?

A. About nine years.

Q. Do you remember making an entry under the Timber and Stone Act in September, 1902?

A. Yes, sir, about that time.

Q. I show you timber and stone land sworn statement, dated September 19, 1902, and ask you if that is your signature. A. It is.

Q. I show you the testimony given by you before the land office, dated January 21, 1903, and ask you if that is your signature to that?

A. It is.

Q. Were you in the same business in September, 1902? A. No, sir.

Q. What was your business then?

A. Traveling salesman.

Q. Where did you travel from to where?

A. From Boise in Boise territory.

(Testimony of Emerson S. Sensenig.)

Q. And who was the first person that spoke to you about taking up one of these claims, or where did you learn about them?

A. I can't tell you that. I knew as a citizen that as a citizen I had a right to take up a timber claim, and I was looking for an opportunity.

Q. And you made arrangements to go to view one of these claims, did you? A. Yes, sir.

Q. Did you go alone or with somebody?

A. Went with a party.

Q. Do you know who arranged for the party?

A. No, I don't know as I do; I was on the road at that time and was called in by 'phone on purpose to go.

Q. Do you remember who called you in?

A. Yes, sir, J. Verne Nusbaum.

Q. And was he of the party? A. Yes, sir.

Q. Who else?

A. His wife, H. K. Eagleson and wife, and Mrs. Alexander.

Q. What Mrs. Alexander?

A. H. K. Eagleson's mother in law — Charlie Eagleson; I don't know whether that was all or not.

Q. Were you working with Mr. Nusbaum then?

A. No, sir.

Q. He knew, of course, that you wanted to locate? A. Yes, sir.

Q. You had arranged that with him?

A. Yes, sir; that had been talked over quite awhile before that.

Q. Where did this party start from?

(Testimony of Emerson S. Sensenig.)

A. It started from our residence here in Boise.

Q. Did they come to get you?

A. I think so, yes.

Q. Were you married at that time?

A. Yes, sir.

Q. And your wife is Lucretia C.?

A. Yes, sir.

Q. Did she take up a claim too?

A. She did.

Q. At the same time? A. Yes, sir.

Q. And had you seen a locator who was to locate you?

A. No, sir, that was arranged for by either Mr. Nusbaum or one of the Eaglesons.

Q. Where did you go to look at this land?

A. Beyond Idaho City.

Q. And what place did you stop?

A. Kempner's.

Q. Who did you meet there?

A. Pat Downs.

Q. And he took you out over the land?

A. Yes, sir.

Q. And did you pay Mr. Downs there?

A. No, sir.

Q. Did you subsequently pay a locating fee?

A. Yes, sir.

Q. Who did you pay it to?

A. I think it was paid to Mr. Wells—I am not positive about that.

Q. Just your best recollection?

A. Yes, sir.

(Testimony of Emerson S. Sensenig.)

Q. And were all of you located in a crowd?

A. Yes, sir, we all went together.

Q. Were you given your choice of the lands, or were you pointed out a piece and was it indicated that that was yours?

A. I think we had the choice. I think we were shown the corners; we made notations and arranged among us in regard to the pieces we were to file on.

Q. How many were in the party that went from here?

A. Well, sir, seven or nine, or possibly ten—I don't remember.

Q. And you were shown that number of claims and arranged among yourselves which would take each?

A. If I remember correctly the party stayed together until all the corners were shown us.

Q. How far did you go from Kempner's?

A. Possibly two or three miles.

Q. Did you come back the same day?

A. No, sir.

Q. The next day?

A. Yes, that or the day following.

Q. And did Mr. Downs make out the descriptions of all of these pieces of property?

A. No, sir.

Q. You made your own?

A. No, sir, I think Mr. Charles Eagleson made out, filled our applications.

Q. No, I mean the description when you were up there as to what lands you should locate on when

(Testimony of Emerson S. Sensenig.)

you came back. A. Yes, sir.

Q. Did Mr. Downs make that out?

A. After we returned?

Q. No, before you returned. I mean this, that if I would go up there and look at a piece of land and he would tell me this was mine I wouldn't know where it was. A. No, sir, he did not.

Q. Where did you learn what the description was from which to file the papers?

A. From the notations that were given us that we also took from the corners of the land we had seen.

Q. Did Mr. Downs write anything for you, or did you take it on notes? A. We took it on notes.

Q. Did you take the notes of the one you were to have or all of them?

A. There was one man in our party that took notes for all of us if I remember correctly—I think it was Charles Eagleson, but I wouldn't be positive as to that.

Q. Were you told not to pay Mr. Downs that locating fee and to pay Mr. Wells, or how was that?

A. I don't know—I really don't know how we came to pay Mr. Wells, unless it was understood that they were working together.

Q. Had you met Wells at that time?

A. Never seen him.

Q. How long after the land was located did you see him?

A. Two or three days after we returned to Boise.

Q. How long after you returned to Boise did you

(Testimony of Emerson S. Sensenig.)

file your first statement in the land office?

A. Several days, two or three days, possibly more—I don't remember.

Q. Did you know Mr. Kinkaid at that time?

A. Never seen him.

Q. Mr. Pritchard? A. No, sir.

Q. Never saw either of them? A. No, sir.

Q. Do you know either of them now?

A. I know Mr. Kinkaid.

Q. This paper, do you know who did the type-writing or who prepared that?

A. No, sir, I don't know as I do—I don't know.

Q. Where did you first see that paper to your best recollection?

A. In the land office, I suppose.

Q. Did you take it to the land office or did somebody bring it there for you?

A. I don't know—I don't remember.

Q. Where did you pay Mr. Wells this locating fee? A. In his office, I think.

Q. And did the rest of them go there with you at that time, or some of them? A. Part of them.

Q. Do you remember those that went with you?

A. I do not.

Q. How many of them were there?

A. Well, sir, I can't tell you that—I don't remember.

Q. Your best recollection?

A. Well, sir, I am a blank—I don't know.

Q. Now, did one of these—you say at the same time you filed—were there a number of the party

(Testimony of Emerson S. Sensenig.)

that filed the same day, or did all of them file the same day?

A. I think all of them filed, or about all.

Q. I mean your recollection, when you went to the land office, which of them were there?

A. Well, sir, I can't tell you—I don't remember.

Q. And you have no recollection of where you got that paper? A. No, sir, I have not.

Q. Do you know whether Mr. Kinkaid prepared that paper?

A. He did not—that is, to my recollection I don't know that he did.

Q. And you don't know who prepared it?

A. No, sir, I don't.

Q. Did you know Mr. King, the register, at that time? A. No, sir, I did not.

Q. Do you know who introduced you to Mr. King? A. I don't remember.

Q. Now, did you know where there was a market for this at that time? A. No, sir.

Q. Did you know of people that had been selling timber claims at that time? A. I did not.

Q. Did you know of any persons that were taking up timber claims at that time?

A. Not outside of our own party.

Q. Did anybody offer to buy that or did you have any understanding that you could sell them to any person or corporation at that time?

A. None whatever.

Q. No understanding with anybody?

A. No, sir.

(Testimony of Emerson S. Sensenig.)

Q. And when it came time to prove up do you remember going to the land office?

A. Yes, sir.

Q. And did you go alone? A. No, sir.

Q. Who went with you? A. My wife.

Q. Who else?

A. Mr. Eagleson and his wife, I think.

Q. Who else?

A. Well, sir, I don't know—I can't remember.

Q. Now, do you know how much it cost you to make your final proof? A. Yes, sir.

Q. How much? A. About \$412.

Q. And your wife proved up at the same time, and her's was the same amount, was it?

A. Yes, sir.

Q. And did you borrow that money?

A. I did.

Q. From who did you borrow it?

A. Capital State Bank.

Q. From whom?

A. Capital State Bank, a portion of it at least—I don't remember how much I borrowed.

Q. I am asking these questions just to find out. I am not prying into your personal affairs, Mr. Sensenig. When did you borrow it—the day you proved up?

A. No, sir, it was about a week previous to that.

Q. Do you know how much you borrowed?

A. No, sir, I do not.

Q. You furnished the money for your wife to prove up too, did you? A. Yes, sir.

(Testimony of Emerson S. Sensenig.)

Q. And you borrowed enough besides what you had to pay for both? A. I did.

Q. Did you get the money on your individual note? A. Yes, sir, I did.

Q. Do you remember the person with whom you negotiated the loan?

A. The cashier of the Capital State Bank, H. E. Neal.

Q. And, as I understand, your note was unsecured? A. Personal note.

Q. Do you remember how long the note was to run? A. Six months, I think.

Q. Have you any recollection of approximately how much that was?

A. No, sir, I have not.

Q. I mean, was it \$200 or \$400 or \$800?

A. Well, sir, I don't know.

Q. No recollection whatever?

A. None whatever of the amount of that note.

Q. Well, do you remember how much of your own money you had? A. No, sir, I do not.

Q. I know this has been some time ago, but have you your bank accounts that you could refresh your memory from and learn that for me?

A. No, sir, I have no record, I don't think, unless I should have the note, but I don't believe that I have.

Q. Well, did they just give you that money to your credit and you drew a check on it, or did they give you a certificate of deposit, or did they give you cash, at the bank?

A. I had a certificate of deposit.

(Testimony of Emerson S. Sensenig.)

Q. And you arranged for making that loan yourself? A. Yes, sir.

Q. And then you and your wife went to the land office, and did you go directly to the land office from the bank, as you remember it? A. Yes, sir.

Q. And paid the money there and got a receipt for it? A. Yes, sir.

Q. Now, up to this time had anything been said about selling this land? A. No, sir.

Q. Didn't know of any market?

A. No, sir.

Q. How long after that did you find a prospective buyer? A. About sixty or ninety days.

Q. And was that after you got your final certificate? A. Yes, sir.

Q. And who was the person that spoke to you about it then?

A. Mr. H. K. Eagleson, I think.

Q. What did he say about it?

A. We had arranged not to sell our claims individually, but collectively.

Q. And had he been making arrangements?

A. He had been negotiating, yes, sir.

Q. Did you know who he was negotiating with?

A. Not at the time, no, sir.

Q. You subsequently sold? A. Yes, sir.

Q. And who made the arrangements by which you met the gentleman you sold to?

A. Mr. Eagleson.

Q. And did you all go in a body to sell?

A. Not to sell—I think he arranged for the party

(Testimony of Emerson S. Sensenig.)

—he practically done the selling.

Q. And in whose office did you do the selling?

A. I couldn't say. Mr. Eagleson done the selling.

Q. Well, I had reference to the time you got the money, the important part of the selling?

A. Mr. Kinkaid's office.

Q. And it was arranged before you went there that you would accept so much money?

A. Yes, sir.

Q. And the deed was all prepared when you went there? A. Yes, sir.

Q. And all you had to do was to go there and get your money? A. Yes, sir.

Q. And your wife went along with you?

A. Yes, sir.

Q. Do you remember how much money you got?

A. Yes, sir.

Q. Was it in cash or check?

A. I don't remember that.

Q. What is your best recollection?

A. Well, sir, I couldn't tell you—I don't know whether he paid us in cash or check. I have forgotten.

Q. Do you know before whom this deed was acknowledged? I mean, did they bring a notary public in at that time?

A. I think so—now I wouldn't be certain about that, whether they did, or whether we went out.

Q. Did you meet Mr. Pritchard at that time, Mr. L. M. Pritchard, the notary?

A. No, not to my recollection. The deed was ac-

(Testimony of Emerson S. Sensenig.)

knowledged by someone, but I don't know who.

Q. Do you know Mr. Pritchard?

A. I do not.

Q. And you say you have no recollection of whether you received the consideration in cash or in check?

A. I have not.

Q. Do you know how much you got for the two of them?

A. Yes, sir.

Q. How much?

A. \$1700.

Q. And you got that much?

A. Yes, sir.

Q. And was any taken out for any expenses or anything?

A. No, sir.

Q. Who gave you that check or money?

A. Mr. Kinkaid.

Q. And he settled with the others that were there at that time?

A. I suppose so.

Q. Were you the first one he settled with, or did he settle with the others?

A. I couldn't tell you—I don't know.

Q. Do you remember who was there on that occasion?

A. Mr. and Mrs. Eagleson—I don't know whether there was anyone else there at that time or not.

Q. Mrs. Sensenig?

A. Yes, sir.

Q. Was Mr. John I. Wells there?

A. No, sir.

Q. Was the last you ever had to say or do with Mr. Wells in relation to this matter when you paid the locating fee?

A. Yes, sir.

Q. That was at his office?

(Testimony of Emerson S. Sensenig.)

A. That was the only time I ever seen the man to know him.

Q. What did you go to his office for? You knew what the locating fee was. A. To pay it.

Q. I was asking whether you went there for anything else? A. No, sir.

Q. Is your wife here?

A. She has been excused for to-day.

Q. You didn't know Horace S. Rand?

A. No, sir.

Q. Don't know him now? A. No, sir.

Q. Didn't know for whom this property was being purchased? A. No, sir.

Mr. BUNDY.—Q. Didn't care, did you?

A. No, sir.

Mr. GORDON.—Q. And I will show you signature of Emerson S. Sensenig and Lucretia C. Sensenig to deed, dated February 16, 1903, made by Emerson S. Sensenig and Lucretia C. to Horace S. Rand, consideration \$1600, and ask you if that is your signature and your wife's signature to that deed? A. Yes, sir, it is.

Q. You don't know whether you acknowledged that before Mr. Pritchard or not?

A. I do not.

Q. You haven't any recollection of that?

A. No, sir, I have not.

Mr. GORDON.—This is of the two pieces, and I offer both of them now: the south half of the southeast quarter, the northeast quarter of the southeast quarter, and the southeast quarter of the northeast

(Testimony of Emerson S. Sensenig.)

quarter of section 26, and the southwest quarter of section 23, in township 7 north of range 8 east, Boise meridian. We offer in evidence the deed that I have just read, the sworn statement of Mr. Sensenig, dated September 19, 1902, the testimony of Mr. Sensenig before the land office, dated January 21, 1903, the cross-examination thereto, the proof papers, the final receipt, the certificates of the register and receiver of the land office, dated January 21, 1903, and the patent to said lands.

(Emerson S. Sensenig papers marked Plaintiff's Exhibit No. 43A to 43N inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Did you understand at this time that Mr. Pat Downs and John I. Wells were in partnership and engaged in locating?

A. That was my impression.

Q. And that Mr. Wells collected the fee?

A. Yes, sir.

Q. I take it from your evidence, Mr. Sensenig, that the allegation in this complaint—there is an allegation in the bill of complaint that you made your timber and stone entry under an agreement by which you promised to turn the title over to the Barber Lumber Company or some other person as soon as you got title from the Government. Is that allegation true or false? A. False.

Q. Did you at any time prior to the issuance of your final receipt have any negotiations, make any

(Testimony of Emerson S. Sensenig.)

effort, or receive any offer to buy or sell this property? A. No, sir.

(Witness excused.)

At this time an adjournment was taken until ten o'clock A. M., Wednesday, February 10, 1909.

Court met, pursuant to adjournment, at ten o'clock, the Examiner and counsel for the respective parties being present.

[Testimony of Lucretia C. Sensenig, on Behalf of the Complainant.]

LUCRETIA C. SENSENIG, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mrs. Lucretia Sensenig?

A. Yes, sir.

Q. What is your husband's name?

A. Emerson Sensenig.

Q. You took up a timber and stone claim in October, 1902, did you?

A. It was 1902, but I don't remember whether it was in October or not.

Q. I show you timber and stone sworn statement, October 7, 1902, and ask you if you signed that paper.

A. Yes, sir.

Q. I show you the testimony given by Lucretia C. Sensenig before the land office February 13, 1903, and ask you if that is your signature?

A. Yes, sir.

(Testimony of Lucretia C. Sensenig.)

Q. Mrs. Sensenig, who was the first person that spoke with you about taking up a timber claim?

A. I don't just remember, but I think it was one of the gentlemen of the party; there was several; there was a party of us.

Q. Who were in the party?

A. There were ten of us. Mrs. and Mr. Harry Eagleson, and Mrs. Eagleson's mother, and Mr. and Mrs. Nusbaum, and Mr. and Mrs. Clyde Eagleson, and Mr. Charlie Eagleson, and my husband and myself.

Q. Do you remember which one of them spoke to you about it? A. I do not.

Q. Do you know where they spoke to you about it? A. No, sir, I don't know that.

Q. Your husband, I understand, was a traveling salesman at that time.

A. He was at that time.

Q. And he was away at that time?

A. Yes, sir.

Q. Was it Mr. Nusbaum?

A. It very likely was; he was a brother of mine, and he possibly did.

Q. What did he say about it?

A. I couldn't tell you that, only that we expected to take up claims.

Q. Was it what he said to you that induced you to take up a claim?

A. Yes, sir; that is, if he said it. I wouldn't be positive but he may have.

Q. Who arranged for this party?

(Testimony of Lucretia C. Sensenig.)

A. The gentlemen of the party. I don't know which one of them.

Q. And did they come to the house for you the morning you were to go? A. Yes, sir.

Q. Do you know who located you on your claim?

A. Yes, sir.

Q. Who was it? A. Mr. Downs.

Q. And did you know you were going to meet Mr. Downs when you left here?

A. We didn't know who we were to meet. We understood that some one would locate us.

Q. What town or city did you go to from here?

A. Idaho City.

Q. And did you stop over night there?

A. Yes, sir, the first night.

Q. Do you remember the name of the place you stopped at? A. The Luna House, I think.

Q. And the next day you were shown over the land? A. We went on farther.

Q. Where did you meet Mr. Downs?

A. At Kempner's ranch.

Q. And were you located the day you got there or the next day? A. I don't remember that.

Q. Well, did Mr. Downs take you all in a party to look at this land, or did he take you separately?

A. I think we were all in a party.

Q. Do you remember that, or do—

A. Yes, sir.

Q. Did he show you any particular piece of land and say, that is the piece that you or each of you were to locate on, or what did he do?

(Testimony of Lucretia C. Sensenig.)

A. Well, he showed us the land and we saw our own and the others.

Q. What do you mean by others?

A. That is the others in the party.

Q. Were you given a description of your land up there? A. Yes, sir.

Q. Did he write out a description and give you a description of yours? A. Yes, sir.

Q. And what did you do with that description?

A. I couldn't tell you—I don't remember.

Q. Did you bring it back with you?

A. I don't remember.

Q. Did you go to someone and have them prepare that first paper that I showed you, the sworn statement? A. To the land office, I think.

Q. Was that paper at the land office, or did you take it there? A. I don't remember.

Mr. FRASER.—There is no way to identify that from your question. You said, "That paper." The record wouldn't show what paper you had reference to.

Mr. GORDON.—I think I used the expression, "sworn statement."

Mr. GORDON.—Q. You don't remember then who prepared this sworn statement for you?

A. I do not.

Q. And you don't remember whether it was at the land office when you arrived there or not?

A. I do not.

Q. Do you know Mr. John I. Wells?

A. No, sir.

(Testimony of Lucretia C. Sensenig.)

Q. Do you know how much money you paid at the land office the day you filed?

A. No, sir, I don't remember the exact amount.

Q. How long after you filed was it that you made your final proof?

A. 60 or 90 days, I think—about that time.

Q. Were you notified of the time you were to make this final proof?

A. Well, I presume so; I think my husband told me about it.

Q. And you went to the land office with your husband to make final proof?

A. I don't remember whether it was the land office or not.

Q. Do you remember going to the land office once and paying about \$400?

A. Yes, sir.

Q. Now, was that your own money that you used at the land office?

A. My husband gave it to me.

Q. When did he give it to you?

A. The day we went.

Q. Now, had you had any arrangement or agreement or understanding with anyone as to what you were to do with this property?

A. No, sir.

Q. Had you been told that you could sell it?

A. No, sir.

Q. Had you been told that others were selling land?

A. Yes, sir, I think it was talked of that we had a right to take a timber claim, and we expected to use that right when the time came that we could.

(Testimony of Lucretia C. Sensenig.)

Q. Did you know how much this timber claim was worth? A. No, sir.

Q. Did you have any negotiations with anyone for the sale of it? A. No, sir.

Q. Did you have any negotiations with anyone for the sale of it? A. No, sir.

Q. You did sell it? A. Yes, sir.

Q. To whom did you sell?

A. Well, I think it was a Mr. Rand, although I didn't know until we signed the deed.

Q. Did you ever see Mr. Rand?

A. Not that I know of.

Q. Had you ever heard of him before?

A. No, sir.

Q. Did you know whether he lived in Boise?

A. I did not, no, sir.

Q. And did you see anyone with reference to selling this land? A. No, sir.

Q. Did you sign a deed for it? A. Yes, sir.

Q. Where?

A. It was on Main street somewhere, but I don't remember where.

Q. Do you know in whose office it was?

A. No, sir, I don't remember that.

Q. Do you remember who was present when you signed the deed? A. No, sir.

Q. Was your husband present?

A. Well, I wasn't alone, but I know he wasn't there.

Q. Do you know who directed you to go there?

A. Yes, sir.

(Testimony of Lucretia C. Sensenig.)

Q. Who?

A. I don't remember who directed me to go there; there were several others there, but I don't remember who they were.

Q. Did you receive any money when you signed this deed? A. I don't remember that.

Q. Was this the first time you had been to that office? A. Yes, sir.

Q. Did you ever go there after that?

A. No, sir.

Q. Did you ever sign but the one deed?

A. No, sir, I think not.

Q. Did you know how much you were selling this property for?

A. I think I did, but I don't remember now—I have forgotten.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mrs. Lucretia C. Sensenig, dated October 7, 1902, her testimony before the land office, dated February 13, 1903, the cross-examination thereto, the register's and receiver's certificates, dated February 13, 1903, the patent to the southwest quarter of section 23, township 7 north of range 8 east, Boise Meridian. The deed was offered yesterday, and was given jointly with the husband.

(Lucretia C. Sensenig papers marked Plaintiff's Exhibit No. 44A to 44L, inclusive.)

Cross-examination.

(By Mr. FRASER.)

Q. You didn't file on this land for quite awhile

(Testimony of Lucretia C. Sensenig.)

after you came back, Mrs. Sensenig, or was it the next day?

A. It seems to me it was real soon.

Q. And do you know how long after you filed it was before you proved up? A. Not exactly.

Q. Now, when you went up and looked at this land, did Mr. Downs take you all out in a bunch and show you this land, or did you go separately?

A. We went together.

Q. And he showed you your piece?

A. Yes, sir.

Q. And you were satisfied with that location, I suppose? A. Yes, sir.

Q. You didn't tell him you wanted another location? A. No, sir.

Q. You thought it was as good a claim as any so far as you were concerned? A. Yes, sir.

Q. And the reason he didn't show you any other claims was because you didn't demand to be shown others? A. Yes, sir.

Q. But he didn't insist that any one person take any one claim? A. No, sir.

Q. Mrs. Sensenig, the application for the purchase of this land that you filed in the land office on October 7, 1902, contained this statement. I wish to call your attention to it. "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or

(Testimony of Lucretia C. Sensenig.)

persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Was that true when you made it, that statement? A. Yes, sir.

Q. And it was true at the time you made your final proof, wasn't it? A. Yes, sir.

Q. You hadn't at that time entered into any agreement to sell this land to them, or by which they were to have any interest in it? A. No, sir.

Q. And you made it for your own benefit, and expecting to dispose of it, and make what you could out of it? A. Yes, sir.

Q. Mrs. Sensenig, this is the case of the United States against the Barber Lumber Company and others, and in the bill of complaint they charge that you, together with others entered this land under an agreement with the Barber Lumber Company and the other defendants named, by which you agreed to take it up, and after you should get title you would transfer it and turn it over to them. Is that true or false? A. That is false.

Q. You didn't know the Barber Lumber Company, did you? A. Never heard of them.

Q. And you had no negotiations looking toward the sale up to that time, looking toward the sale or disposal of any interest in this claim?

A. No, sir.

(Witness excused.)

[Testimony of Walter L. Harrison, on Behalf of the Complainant.]

WALTER L. HARRISON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name?

A. Walter L. Harrison.

Q. Where do you live, Mr. Harrison?

A. I live at 605 South 16th St., Boise.

Q. How long have you lived there?

A. Four years.

Q. Where did you live in 1901?

A. I lived on Thirteenth street—I forget the number—520, I think.

Q. How long have you lived in Boise?

A. I came here in 1900.

Q. What is your occupation?

A. Why, I am following contracting, building, carpentering.

Q. Were you in the same business in 1901?

A. No, sir.

Q. What was your business then?

A. I had rented a mill of Mr. Steen, a flour mill down on the road—I think it was in 1901 I rented that mill.

Q. Did you take up a timber and stone claim?

A. Yes, sir.

Q. Did you ever take up more than the one?

A. No, sir.

(Testimony of Walter L. Harrison.)

Q. I show you timber and stone land sworn statement, dated November 26, 1901, and ask you if that is your signature attached? A. It is.

Q. And did you file that paper in the land office?

A. Yes, sir.

Q. I show you testimony given by Walter L. Harrison before the land office, dated February 12, 1902; is that your signature to that?

A. Yes, sir.

Q. I show you deed, dated September 12, 1902, signed by Walter L. Harrison and wife Alta M. Harrison to A. E. Palmer, and ask you if that is your signature and your wife's signature to that deed?

A. Yes, sir.

Q. And you acknowledged the same before L. M. Pritchard? A. Yes, sir.

Q. Mr. Harrison, who was the first person that you remember who spoke to you with reference to taking up one of those claims?

A. Dean West.

Q. Where was that conversation had?

A. I think it was on the street—I think I met him on the street the first time we was talking about it—I am not sure, positive about that.

Q. Did he bring up the subject or did you?

A. He brought it up.

Q. How long had you known Mr. Dean West at that time?

A. I don't know—not very long though.

Q. How intimately? A. Not very.

Q. Do you know where you met him—where you

(Testimony of Walter L. Harrison.)

became acquainted with him?

A. No, sir, I don't remember.

Q. What did Mr. West say to you on that occasion?

A. He said there was some timber being taken up up in the Boise Basin, and he would like to interest me in it.

Q. What else did he say?

A. I don't remember that he said anything more at that time except in general conversation probably it was brought up.

Q. Did he tell you how much it would cost you and what you could do with it?

A. Not at that time.

Q. Did he later? A. Yes, sir.

Q. How long after this first conversation did you have that conversation with him?

A. I would judge—I don't know—somewhere in the neighborhood of two or three months—I don't know—a month or two—I don't know just exactly, but it was later on—I don't remember that.

Q. I just want your best recollection.

A. My best recollection is that it must have been somewhere in the neighborhood of two or three weeks, something like that.

Q. Did you meet him on the street again?

A. Yes, sir, I met him frequently—I can't say—it was on the street.

Q. Where was this conversation?

A. He came to my house different times.

Q. With reference to taking up property?

(Testimony of Walter L. Harrison.)

A. Once or twice I think it was, yes, sir.

Q. Did he say anything to you that induced you to take it up at any one of these conversations? State as best you can what he said.

A. Well, yes, it was through his influence that I took it up, yes, sir, doubtless.

Q. When was it he told you what it would cost you to take it up?

A. It was one of the conversations—I don't remember any dates, I can't fix any dates, any times especially.

Q. How long was this before you did make your filing papers?

A. It couldn't have been more than thirty to sixty days.

Q. What did he tell you it would cost you?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and as asking for hearsay evidence.

A. Well, the filing cost me, the filing, \$12.50, or anything it was.

Mr. BUNDY.—By filing you mean location?

A. Yes, sir, and also the location, for locating the property, the amount that was charged.

Mr. GORDON.—Q. Did he tell you how much the property was going to cost?

A. I don't think that he did in figures—I don't remember of it, no, sir, I don't remember.

Q. Did he tell you how much you were going to make out of it?

Mr. BUNDY.—Same objection as before, and call-

(Testimony of Walter L. Harrison.)

ing for hearsay evidence from a person not a defendant.

A. He give me an idea what I could get out of it, yes, sir.

Q. How much did he tell you you could get out of it?

A. \$250 if I wanted to sell—that was the idea.

Q. And you understood that he had somebody that you could sell to and get the \$250?

A. Yes, sir, I understood that.

Q. Did he tell you who would locate you?

A. Yes, sir.

Q. Who?

A. John Wells would see to the location, look after that.

Q. Did you go to see John Wells before you went up to view this land? A. I did, yes, sir.

Q. What did you say to Mr. Wells?

A. I said that I decided to locate on a timber claim; I told him I would, and he sent me up.

Q. And did you have any other talk with him at that time?

A. I don't remember of anything further except that he would send me up and tell me the time.

Q. Did you understand at that time that Mr. Wells was buying property for other persons?

A. No, I did not at that time.

Q. You had no understanding—

A. No, I did not at that time.

Q. Did he arrange the party with which you went up to view the land?

(Testimony of Walter L. Harrison.)

A. I think he did—I am not sure whether he or the party I went with made the arrangements.

Q. Who did you go with?

A. I went with Mr. Pat Downs.

Q. Did you go with Mr. Downs alone?

A. No, sir, I think there was a lady by the name of Miss O'Farrell, and Will Pearson and a man by the name of Burns, as I remember.

Q. Where did you meet the morning you started from Boise?

A. I think it was at the Pacific Hotel; I think we started from that point.

Q. Did you see Mr. Wells the morning you started?

A. I don't think so; I don't remember it.

Q. Did Mr. Wells tell you how much it would cost you for location fee?

A. Yes, sir.

Q. And Downs took you up there to look over the land?

A. Yes, sir.

Q. What place did you go to, what town?

A. Placerville.

Q. Did you remain over night at Placerville?

A. Yes, sir.

Q. How were you shown the land? Were you shown it separately or all together?

A. Why, I think that we all went part way, as I remember it now, to view the land, and the rest of them that were taking it up, but I didn't get a piece at that time on that journey that way. I went with them over the hills all the time we were out, and we drove as far as we could, and then walked around

(Testimony of Walter L. Harrison.)

over the land.

Q. Was it snowing that day?

A. I think not.

Q. Was there snow on the ground?

A. I think not.

Q. How far from Placerville did you go to view this land?

A. It would be I would judge somewhere in the neighborhood of two or three miles. I haven't any way of saying the exact distance, but I should judge it was two or three miles.

Q. Did Miss O'Farrell go along?

A. Yes, sir.

Q. Did Mr. Downs take Miss O'Farrell out and show her another piece of land separate and apart from the rest of you?

A. I believe so—I remember so.

Q. Was this land you located on up on the side of a mountain?

A. No, sir.

Q. Did you go over your land and have the corners pointed out to you?

A. Didn't have the corners pointed out to me. I got out and walked over it as the team was going past. Mr. Downs told me this was where the location would be, and I got out and walked the whole length as near as I could tell.

Q. Yours was right alongside the road?

A. Yes, sir, that was where it was pointed out to me.

Q. Did the rest of them get out?

A. No, sir, I think I was the only one, as near

(Testimony of Walter L. Harrison.)

as I remember.

Q. And then you came back again to the hotel? You all came back together to Placerville?

A. No, we were on our way home at that time.

Q. How do I understand that, that the morning after you got there you all started out to view your claim?

A. Yes, sir.

Q. And you wasn't in the same location with the others?

A. That is right.

Q. And did you go with the others when he was locating them on their claims?

A. I went with the crowd.

Q. And coming back they pointed yours out along the road?

A. No, not then, but after we started home.

Q. And you walked alongside the wagon until you got to where—

A. I wasn't right alongside the wagon, but I was out in the woods in hearing of the wagon, and could see it occasionally, yes, sir.

Q. Who did you pay for locating you?

A. John Wells.

Q. Did you pay him before you went up or after you returned?

A. After I returned I believe, and my location filed, if I remember.

Q. Were you given a description of this land by Mr. Downs?

A. I think not by Mr. Downs; I think I got the description after I got back, if I remember.

Q. Who prepared this sworn statement for you?

(Testimony of Walter L. Harrison.)

A. I can't tell you—I don't remember—I don't know whether it was West or not. I don't remember. What is the statement, Mr. Gordon?

Mr. GORDON.—It is the sworn statement, the first paper you filed in the land office.

A. I think it was Mr. West. I am not sure—I am not positive.

Mr. BUNDY.—You think Mr. West did?

A. I think he did, but I can't say positively—I don't remember.

Mr. GORDON.—Q. When you returned didn't you go to Mr. Wells' office? A. Yes, sir.

Q. That was before you filed any paper?

A. Yes, sir.

Q. Did you get this paper at John Wells' office?

A. I don't remember.

Q. What did you go to Wells' office for?

A. To see him and get the description of the land, if I remember, and pay him for the locating fee.

Q. Wells wasn't up there?

A. No, sir, he wasn't up to Placerville at that time.

Q. Did Downs drive you back?

A. Yes, sir.

Q. How long after you came back was it you went to Wells' office?

A. I can't tell you. I think it was the same day. I am not positive. It may have been late when we got in, but if it was late I didn't go that day. I don't remember positively.

(Testimony of Walter L. Harrison.)

Q. And you took this paper to the land office?

A. Yes, sir.

Q. Who went with you to the land office?

A. I don't remember that there was anyone or not.

Q. Now, who notified you of the time to prove up?

A. I don't remember of it, who did notify me now. I can't think who it was, whether it was through the land office or not—I am not sure.

Q. Did you see Mr. Wells after you made your filing, between then and the time you proved up?

A. The time of final proof, you mean?

Q. Yes. A. Yes, sir, I saw him.

Q. Did you have a conversation with him about this land? A. Yes, sir.

Q. What was this conversation?

A. Between the filing and the time of proof I saw him on the street one day, and I spoke to him in regard to the land, told him that I believed that he or his company could have the land as far as I could see now, something to that effect.

Q. Did you get any money from him at that time or make any arrangements to get any money from him? A. Yes, sir.

Q. How much money did you get?

A. \$200.

Q. Right at that time?

A. No, I think I made arrangements at that time. I told him I was in need of some money; "well," he says, "I can let you have some money I guess,"

(Testimony of Walter L. Harrison.)

something to that effect. I don't know that there was anything further said. He said to come to his office at some future time, I think, as near as I can remember.

Q. How long was that after you filed your first paper in the land office?

A. Was that the time I paid the filing?

Q. You paid your \$7.50 and the advertising fee. How long after you filed your first paper?

A. I can't tell you exactly; it was late in the summer I know, and the filing was done in the fore part of the year, as I remember.

Q. Then, you went to Mr. Wells' office after you met him on the street?

A. Yes, sir.

Q. And you got how much money?

A. \$200.

Q. How long was that before you made your final proof?

A. I don't remember just exactly the date. It was quite a little while though. It must have been thirty days.

Q. Did you give him a note for it?

A. No, sir.

Q. Pay him any interest on it?

A. No, sir.

Q. Tell him when you would repay it?

A. No, sir, I don't hardly think so.

Q. Had you ever had any other business relations with Mr. Wells, except with relation to this property?

A. No, sir, never had.

Q. I don't know whether I understood you to say

(Testimony of Walter L. Harrison.)

how long you had known Mr. Wells before you went there to see him with reference to locating you?

A. I don't know that I had known him before. I don't know. I don't think that I had met him very long before that; possibly had an introduction to him before that, but I don't remember whether it was that time I met him first or earlier than that. It must have been a little earlier than that though I think, but I hadn't known him long.

Q. Then you proved up at the land office?

A. Yes.

Q. Now, as I understand, the time you met him on the street and told him you needed some money, that was the occasion you said that you had concluded to let him or his company have this property?

A. Yes, sir.

Q. Do you remember what you paid at the land office when you proved up, how much money you paid them?

A. No, I don't know. The final proof, you mean?

Q. Yes. A. No, I don't remember.

Q. How long after you paid your money with which to make your final proof in the land office was it that you saw some one with reference to selling this or turning it over?

A. It wasn't very long I think.

Q. The same day?

A. No, I don't believe it was the same day, no sir. It was a few days later, as I remember it.

Q. They gave you a receipt at the land office, did they? A. Yes, sir.

(Testimony of Walter L. Harrison.)

Q. What did you do with that receipt the day you got it? The temporary receipt?

A. I think I took it home.

Q. And with whom did you arrange for your money when you sold this—who paid you for it?

A. Mr. Pritchard paid me.

Q. How did you get to Mr. Pritchard's office; what was the occasion of your going there? Who told you to go there?

A. I think either Mr. West or Mr. Wells, one told me that I could have the matter straightened up by going to his office.

Q. And you went there? A. Yes, sir.

Q. Who was there?

A. Mr. L. M. Pritchard.

Q. Was anybody else there besides Pritchard?

A. I don't remember of anyone else.

Q. And you told him who you were?

A. Yes, sir.

Q. Had you ever met him before?

A. I don't think so.

Q. He bought the property while you were there?

A. Yes, sir.

Q. How much did he give you?

A. He gave me \$650 less the \$200 that I had received.

Q. How much money did he give you in cash?

A. That would be \$450. I am not positive whether that was just the amount or not, but it was very nearly in that neighborhood.

Q. You got just what you expected, \$250 over

(Testimony of Walter L. Harrison.)

and above—

A. I got what I expected to get, yes, sir, out of it.

Q. And did he know that Mr. Wells had let you have that money? Did you tell him about it?

A. I think I told him, yes. I think he knew it besides that; I am positive that he knew about it—he kept it out.

Q. Was the deed prepared when you went there to Mr. Pritchard's office?

A. I believe it was, as I remember it.

Q. And did your wife sign it there, or was it taken to your home?

A. I think my wife went up with me at the time, as I remember it. I am not positive on that, but I think she was there with me at that time.

Q. After that conversation you had with Mr. Wells in which you told him you would sell it to him or his company did you have any agreement with anybody after that until the day you got into Mr. Pritchard's office about selling it?

A. No, I think not.

Q. You understood at that time that that was final?

A. I think probably I had talked with Mr. Wells between that time and the time I went to Mr. Pritchard's office probably; I knew him and would meet him occasionally on the street, and maybe I was at his office once or twice, but I am not positive in regard to the matter.

Q. Did you know to whom this deed was made

(Testimony of Walter L. Harrison.)

at that time? A. Yes, I knew who it was.

Q. Who?

A. Palmer—I knew when he read it to me.

Q. That that name was in there? A. Yes.

Q. You had never met Mr. Palmer?

A. No, I had never met him.

Q. Did you see Mr. Kinkaid in these transactions at all?

A. No, sir, I didn't know Mr. Kinkaid.

Q. I understood you to say when you went to Mr. Pritchard's office that you told him that you had gotten this money from Wells, but that he acted as though he knew about it.

A. That is as I remember it.

Q. Did your wife take up a timber claim?

A. No, sir.

Q. Did you ever make any other deed to this property, or were you requested to make another deed to it? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Walter L. Harrison, dated November 26, 1901, his testimony given before the land office, dated February 12, 1902, the cross-examination attached, the proof papers, the register's and receiver's certificates, dated September 5, 1902, and the deed, dated September 12, 1902, made by Walter L. Harrison and wife, Alta M., to A. E. Palmer, and the patent, to lot 3, and the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter, and the southwest quarter of the northeast quarter of section

(Testimony of Walter L. Harrison.)

30, township 7, north of range 5 east, Boise Meridian.

(Walter L. Harrison papers marked Plaintiff's Exhibit No. 45A to 45M, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Harrison, only a few questions. When Dean West first spoke to you about the advisability of exercising your right to enter a timber and stone claim, I think you said that he at that time said nothing to you about there being an opportunity to sell it. Isn't that right?

A. That is the way I remember it.

Q. Simply a casual conversation in which he told you there were entries being made?

A. Yes, sir, that is all.

Q. This land up in the Boise Basin had just recently been opened to entry?

A. That is the way I understood it.

Q. You didn't understand that Mr. West was representing any company at that time?

A. Not right at that time I don't think I did.

Q. How long was that before you did go up and look at the land?

A. It was quite awhile, thirty to sixty days before we went up.

Q. You spoke to him or he spoke to you again about going up before you went? A. Yes, sir.

Q. And can you state the conversation at that time?

A. I don't remember the exact conversation. I

(Testimony of Walter L. Harrison.)

had learned through him—

Q. Just his conversation?

A. No, I don't remember the exact conversation at that time.

Q. Now, was it a matter at that time of common knowledge on the street here and in this vicinity that lands were open to entry, and that people were exercising their rights under it?

A. No, I don't know whether it was a matter of common knowledge; I know there was quite a number that knew it.

Q. And it was also currently talked on the street here that the timber land had a value in excess of what it would cost from the Government, wasn't it?

A. I don't know that it was talked on the street at that time either, but I had learned it.

Q. Who did you learn it from?

A. I think I learned it through Dean West; that is as I remember it.

Q. Now, had you learned that from Dean West before you made your first filing, before you filed your first papers?

A. Yes, sir, I think I had.

Q. And was that the time that he told you, as you have testified, that if you entered the land there would be an opportunity to make \$250 on it if you wanted to sell it?

A. Yes, I think so.

Q. Now, that was the only information conveyed to you at any time by Mr. West or anybody else before you filed your first papers with reference to what you could make, was it not?

(Testimony of Walter L. Harrison.)

A. Yes, as I remember it that was the only information.

Q. So that the only way you were ever told by anybody that you could make any money by exercising your right was by selling if you wanted to sell?

A. Yes, sir.

Q. You were not told, you didn't understand that Dean West hired you to go up there and take those lands?

A. No, sir.

Q. As a matter of fact you didn't go up there as a hireling to enter these lands?

A. No, sir, I did not.

Q. In your first application, when you filed your first papers, you swore to a statement which has been called to your attention, being your original application, dated November 26, 1901, in which you said at that time: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself. That was absolutely true at that time, wasn't it?"

A. It was absolutely true.

Q. And at the time you filed your first paper in November, 1901, you had had no proposition from anybody to buy and you had made no offer to sell?

A. No, sir.

Q. At that time you simply exercised your right with the view of selling in the future, if the price was satisfactory, and you made what you thought you

(Testimony of Walter L. Harrison.)

ought to make on it? A. Yes, sir.

Q. You say that Mr. West advised you that it would cost some \$25 to locate?

A. Yes, that was the fee.

Q. Let's clear up this locating fee business. Locator, as I understand the term, and as you have used it in your evidence, means a cruiser or surveyor who is supposed to be familiar with the lands and the corners and able to tell people what particular subdivision they are on. A. Yes, sir.

Q. Mr. Downs located you, I think you said.

A. Yes, sir.

Q. And at the time Mr. Downs located you your understanding was that he was employed by you for that purpose, that was what you were paying him for? A. He was sent out as a locator.

Q. You were paying him?

A. No, I was paying Mr. Wells.

Q. You understood that Mr. Downs and Mr. Wells were in together in the business of locating people, did you not?

A. I supposed that was the way of it.

Q. When Mr. Downs located you on a particular tract of land, he did that, as you understood it, as your employee, did he not?

A. I hadn't thought of it in that light, but I suppose that was true.

Q. You didn't suppose he was there working for anybody else?

A. As far as I knew, I didn't know but what he was just working for Mr. Wells in the matter as far

(Testimony of Walter L. Harrison.)

as I knew. I didn't know. I knew that he was connected with it some way and had that part of it, but I didn't think of it as he got the fee.

Q. Your negotiations were with Mr. Wells?

A. Yes, sir.

Q. When you paid Mr. Wells the \$25 you understood that that was to cover his service of locating you, in showing you a particular piece of land that was subject to timber and stone entry, did you not?

A. I did.

Q. And you didn't understand that Mr. Wells was locating you for anybody but yourself?

A. No, sir.

Q. There has been a good deal said here as to whether he showed you one piece or two or three pieces. You didn't ask to be shown only the one piece, did you? A. That is all, sir.

Q. And as you understood it one claim was the same as any other claim.

A. Of course, I wanted a claim that had timber on it.

Q. But you exercised your own discretion as to whether the one shown you was satisfactory.

A. Yes, I accepted it. It must have been satisfactory; I thought there was timber on it.

Q. If he had shown you a piece of land that was not satisfactory, there was no reason why you should take the one he showed you?

A. That is right.

Q. And if it had not been satisfactory you would have insisted on being located on some other piece?

(Testimony of Walter L. Harrison.)

A. Yes, sir.

Q. Mr. Wells told you that the locating fee would be \$25?

A. Yes, sir.

Q. And you paid it?

A. Yes, sir.

Q. Made that investment yourself?

A. I did.

Q. And when you went to the land office first there was some little fee that had to be paid. Did you pay that?

A. Yes, sir.

Q. And I think there was some advertising fees?

A. Yes, sir.

Q. And you paid that?

A. I paid whatever fees was necessary to pay.

Q. So that up to the time you filed your first paper and caused the advertisement to be issued that on a certain day you would apply to purchase, up to that time you had never had any talk with Mr. Wells or with anybody else, or promised to sell it to them?

A. I had never talked—but I had never made a promise, but it could be sold.

Q. Now, some time after that you had a talk with Mr. Wells?

A. Yes, sir.

Q. How long after you made your first filing?

A. In the summer some time—I don't know just exactly the date. It was before final proof.

Q. I think you are a little in error in that, Mr. Harrison. Let me refresh your recollection. Your original papers were filed the 26th day of November, 1901, your final proof was submitted and the money paid in February 12, 1902.

A. Yes.

Q. That would be in the winter?

A. That was true.

(Testimony of Walter L. Harrison.)

Q. At that time they gave you just a temporary receipt, but didn't give you the final receipt.

A. No, sir.

Q. At that time, all the timber and stone entries were held up? A. Temporary receipt, yes, sir.

Q. Final receipt was not issued to you until September 5, 1902? A. Yes, sir.

Q. How long was it prior to February 12, 1902, when you made your proof, was it that you had this talk with Wells?

A. February 12th? It wasn't prior to February 12, 1902.

Q. Then it was after February 12th?

A. It was after February 12, yes, sir.

Q. Then you had made your final proof before you had your talk with Wells?

A. I may get the term confused, but the time I paid \$412, or whatever it was, do you call that your final proof?

Q. That was when you made your final proof. That was on February 12, 1902.

A. I have got it confused then, because it was after that, it was before the final papers, before September 5th, in the summer sometime that I saw Mr. Wells.

Q. So that at the time you paid the \$400 into the land office you hadn't seen Mr. Wells at all?

A. Not in regard to any money.

Q. No, that is what I thought. So that the final proof was made February 12, 1902, but final receipt was not issued until September 5, 1902?

(Testimony of Walter L. Harrison.)

A. It was before the final receipt was issued then; that is the proposition.

Q. This talk with Mr. Wells relative to money was after you had made your final proof in February, 1902?

A. After that time, yes, sir.

Q. And before you received your final receipt in September, 1902?

A. Yes, sir.

Q. So that at the time you made your final proof and paid in the \$400 you had not had any talk with Mr. Wells about money at all?

A. No, sir,

Q. And up to that time you had made no arrangement of any kind or character with Mr. Wells or anybody else by which you had agreed or promised to sell to them any interest in this land?

A. I had not.

Q. So that the allegation in this bill of complaint to the effect that you made your timber and stone entry originally and finally proved up on it under an agreement by which you had agreed to turn the land you might acquire from the Government over to the Barber Lumber Company or some of the other defendants is not true, is it, so far as you are concerned?

A. No, sir.

Q. I guess I make that clear. It is alleged in this action that you were procured to make a timber and stone entry here, and did so, under an agreement with the defendants named, and that you finally made your final proof under an agreement with the defendants named, and that agreement obligated you to turn it over to somebody that they would direct. Is that allegation true or false?

(Testimony of Walter L. Harrison.)

A. I should think that was false, if I catch the meaning of it.

Q. The meaning of it is just this: Did you make your original application or final proof under any agreement or understanding that as soon as you get title you would turn it over to these defendants or anybody else?

A. I did not.

Redirect Examination.

(By Mr. GORDON.)

Q. I didn't understand exactly what the statement was that you made in answer to some questions of Mr. Bundy's, but it impressed me that it was a little different from what I understood you to say when I was examining you, so I will ask you these questions.

A. All right, sir.

Q. After you made your original entry I asked you how long it was before you saw Mr. Wells with reference to this \$200? Did I understand you to say it was sixty or ninety days?

A. I said it was in the latter part of the summer some time. I was confused on the dates, I guess, or on the names of the persons I suppose it must have been—February 12th—February 12th was the final proof—I didn't take it that way—that was all there was to that—in the summer before I got final receipt.

Q. Now, I asked you when you made your proof how much you paid, and you told me you didn't know, you hadn't any recollection of that; I asked you what you paid at the land office.

A. It was \$412 or something like that.

Q. I understood you to say you didn't remember

(Testimony of Walter L. Harrison.)

what that was.

A. I have got this mixed a little in my mind about these proofs, I see that, but that was the amount. I have got the check-book in my pocket where I gave the check, and I will produce it.

Q. Have you the check?

A. Check-book—I didn't get the check, but I have got the check-book.

Mr. FRASER.—Q. Is the date on it?

A. Yes, sir, February 12, I drew out \$425 and paid the filing, and the balance was used for change by myself.

Mr. BUNDY.—Q. Then it was after that that you sold out to Wells and got the money?

A. Yes, sir.

Mr. FRASER.—Q. Just this question, Mr. Ellis. You made your final proof and paid for your land with your own money?

A. I did, sir.

Mr. FRASER.—Q. It was nobody else's money?

A. Nobody else's money than my own.

Mr. FRASER.—Q. You had it in the bank?

A. Yes, sir, I had it in the bank.

Mr. GORDON.—Q. As I understand, you said that you had no conversation with Mr. Wells before you made your original entry concerning the fact that you would convey to him?

A. No, sir.

Q. Then when was the next time after that that you saw Mr. Wells with reference to this property, or had any conversation with him with reference to this property?

A. After that time?

(Testimony of Walter L. Harrison.)

Q. Yes.

A. Along in the summer some time, as I remember now. This is before my filing you are speaking of, the first time? Before the filing?

Q. I am asking, after you made your original filing, how long after that was it that you saw Mr. Wells and had a conversation with him concerning the property on which you had filed?

A. I don't remember.

Q. Approximately, as near as you can remember.

A. Well, I should think it must have been three or four months, something like that.

Q. Well, was that the time you told him you had concluded to let him have the property?

A. Yes, sir, that was the time. It was in the summer, some time in the summer.

Q. Was that the time you got the \$200?

A. It was after that, after the conversation with him quite a little while before I got the \$200, a week or so after I had that conversation with him, yes, sir.

Q. Then why did you express it that you had concluded to let him or his company have it?

A. Because I hadn't before decided to let him or anybody have it; it was my property—I paid for it, and it was mine, and I thought I had a right to hold it and sell it whenever I got ready. That was my idea and I made up my mind that I would let him have it.

Q. Didn't I understand you to say that you didn't know Mr. Wells was buying this land?

A. I don't think so; I don't think I said that Mr.

(Testimony of Walter L. Harrison.)

Wells was buying it. I said on the start that Mr. West had informed me—I had known that these lands were for sale, that is, that we could sell them.

Q. I just want to get it right.

A. Yes, sir, I want it right too. I have got it right in my head I know, but whether I can get you to understand or not is a question.

Q. Did Mr. West tell you that in the conversation you had with him before you went up to enter this land?

A. I think I found it out that I could sell the property if I wanted to.

Q. Did you know that you could sell to John Wells?

A. No, I didn't know I could sell it to John Wells, but I know there was someone in the market.

Q. Did you know it was somebody that John Wells was representing?

A. I didn't know he was representing anyone, but I knew it was in connection some way with the deal, that there was a buyer ready for the property when I wished to sell it; that was the idea exactly.

Q. Then why was it you went to Wells and told him you had concluded to let him or his company have it if you didn't know that he was representing a company, or that he was representing a company that wanted to buy it?

A. I had learned afterwards, I say—in my answer just now I said that this was, that I learned through Mr. West that there was a company back of this, or somebody back of this that would give a com-

(Testimony of Walter L. Harrison.)

pensation above the filings for this land—that I could sell—that I could find a market for the property.

Q. And could get \$250 over and above what it cost you? A. Yes, sir, if I wanted to sell.

Q. Did Mr. Wells tell you that?

A. I don't remember whether Mr. Wells told me or not; I think Mr. West told me, or perhaps Mr. Wells told me; I am not positive in regard to that. I talked to them both I think in regard to it, long before I got the money.

Q. You talked to Mr. Wells about this long before you got the money?

A. Long before, some time I think—I met him some time—anyhow I know I could sell and get that much out of it.

Q. To whom?

Mr. FRASER.—Counsel for the defendant wish to state that we don't wish to be objecting all the time; we wish to allow the Government every latitude which is necessary, but we certainly object to this continued cross-examination of their own witness for the purpose of impeachment, and as improper cross-examination.

Mr. GORDON.—Counsel for the complainant desire to state that we don't ask any latitude from counsel for the defense as to how far we shall go in our examination, and that what has brought forth these questions is the difference in the statement of this witness made in the examination in chief and what has been brought out on cross-examination, as

(Testimony of Walter L. Harrison.)

shown by the record, and counsel are trying to learn what he really means by his evidence as given.

The WITNESS.—That is the only difference that you will find in my testimony. I haven't got it mixed up at all only in that matter, and that was a matter—

Mr. GORDON.—Q. How long after you made your original entry did you pay four hundred and some odd dollars into the land office?

Mr. BUNDY.—That is objected to, as the receipts of the land office are the best evidence of that.

A. It was in February that I paid my money into the land office; my check is the only evidence—I got—I know I got the money out at that time and paid it at that time, and the receipts are the same thing.

Q. And up to that time you had never had any conversation with Wells to the effect, or didn't know that he was purchasing land for somebody else?

A. No, I didn't say that. I never said that at all. I don't think the papers will bear it out that I said that. I said that I had had before that time a knowledge that there was somebody in the field that would take this property—that I had that knowledge.

Q. (Last question read by stenographer.)

A. No, that was up to the time I made the final proof, do you mean?

Q. I mean at the time you paid the four hundred and some odd dollars in the land office.

A. Yes, I had understood before that time that there was parties in the field.

Q. That isn't answering my question. I am ask-

(Testimony of Walter L. Harrison.)

ing about Wells.

A. I don't think so, in regard to Mr. Wells that I had ever made—I don't remember of it that he had ever said anything to me about it before that time.

Q. Did you know, through Wells or Dean West or anybody else, at that time that Wells was purchasing property for himself or for others, this timber land?

A. I knew that—I didn't know positively that even—I knew that there were men that were ready to take this land if I wished to sell at a certain price above what I gave.

Q. Did you know who these men were?

A. No, I didn't know the men.

Q. How did you know there were men that would buy it?

A. Because Mr. Dean West told me so, that there was parties ready to buy the property if I wanted to sell.

Q. Who was it that told you that John I. Wells was buying property for himself or for a company?

A. I don't know that anybody told me that.

Q. Then why did you go to Wells if you didn't know that he was buying the property for himself or for a company? And why did you tell him that you had concluded to let him or his company have that property?

Mr. BUNDY.—I want to interpose an objection to that question as unfair; it contains a misstatement of the evidence of the witness. The witness' evidence is to the effect—

(Testimony of Walter L. Harrison.)

Mr. GORDON.—I object to counsel rehearsing what the witness has said before he answers the question.

Mr. BUNDY.—The evidence of the witness is that on February 12th he didn't know that John I. Wells was buying, and that the time he did go to Wells was long afterwards, some time during the summer, when he told him he had concluded that he would sell the land. The question as asked the witness contains a misstatement of his evidence.

The WITNESS.—A. When I made my final proof there was three months probably left before I saw Mr. Wells in regard to the matter, and I had learned these things probably in that time, that is, that he was the man to go to.

Mr. GORDON.—Q. Do you remember who you learned it from?

A. Well, I may have learned it through Mr. West, I expect. I don't remember positively, but I think that was it.

Q. Did you learn it from anybody else than Mr. West?

A. I don't remember that I did—I don't remember that I did.

Q. Do you remember what Mr. West said that induced you to believe that?

A. No. I don't remember the conversation, and we had met several different times through the summer and spring and all along, and had got pretty well acquainted, and talked the matter over considerable, and there had been some land investigations

(Testimony of Walter L. Harrison.)

possibly that these facts had been mentioned.

Q. Then you got out of this property just the amount that they had promised to give you?

A. That is the way I remember it, that I got out of it just what was promised me.

Q. That was just the same amount Mr. West had told you you could make out of it before you located?

A. Yes, that could be made out of it?

Recross-examination.

(By Mr. FRASER.)

Q. Mr. Ellis, they hadn't absolutely promised you anything, had they, when you took up this land?

A. They told me what I could get out of it.

Q. So that you don't mean to state that they promised you anything at this time?

A. No, promised nothing.

Q. You got what you expected to make out of it?

A. I got what I expected I could make, yes.

Q. You got that? A. Yes, sir.

[Testimony of Edward H. Starn, on Behalf of the Complainant.]

EDWARD H. STARN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edward H. Starn?

A. Yes, sir.

Q. Where do you reside, Mr. Starn?

A. I reside four miles down on the hill road.

Q. What is your occupation? A. Farmer.

(Testimony of Edward H. Starn.)

Q. How long have you resided there?

A. Something over six years.

Q. Where did you reside in September, 1902?

A. I resided here in town, in Boise.

Q. What was your occupation then?

A. I don't just remember what I was doing at that time.

Q. What did you do for a living before going into the farming business?

A. I was butchering for a number of years.

Q. Do you know where you were employed in September, 1902, or whether you were employed at all?

A. I don't think I was employed at all, regularly anyway.

Q. Had you owned a butchering establishment before that?

A. I had owned one, yes.

Q. How long before that?

A. Not a great while, I don't think.

Q. Here in Boise?

A. Yes, sir.

Q. Where was it located?

A. On Main street.

Q. You made a timber and stone filing in September, 1902, did you?

A. I did.

Q. I show you timber and stone land sworn statement, dated September 6, 1902, and ask you whether that is your signature.

A. I think it is.

Q. And did you file that paper in the land office?

A. I suppose I did.

Q. I show you testimony of Edward H. Starn taken before the land office, dated December 18, 1902,

(Testimony of Edward H. Starn.)

and ask you if that is your signature to that.

A. It is.

Q. I show you deed dated February 18, 1903, Edward H. Starn and wife Mary Starn, to Horace S. Rand. Is that your signature and that of your wife attached to the deed?

A. Yes, sir.

Q. Mr. Starn, who was the first person that spoke with you about taking up a timber claim?

A. Jackson Ownbey.

Q. And what did he say about it?

A. He said he had taken up a timber claim, I believe, as far as I remember.

Q. And that you should take up one?

A. No.

Q. State what he said.

A. I don't remember.

Q. How long was that conversation with Mr. Ownbey before you did take up your timber claims?

A. I don't remember that.

Q. What induced you to take up a timber claim?

A. Well, I had a right to take it, and I wanted to use it.

Q. Well, did you know how much it would cost you to take up one?

A. No, I did not.

Q. Where did you learn what it would cost?

A. I learned that at the land office.

Q. Was that before you went up to view the land?

A. No.

Q. Then you went up to take up the claim before you knew what it would cost or anything about it?

A. I suppose I knew something about it, but I

(Testimony of Edward H. Starn.)

don't remember. I don't remember what it did cost.

Q. Did you know Mr. John I. Wells at that time?

A. No, sir.

Q. Who located you on this land?

A. Pat Downs.

Q. Who were with the party that went with you when you located?

A. Well, there was four of us, but I don't remember just who they were, except Aaron Ownbey, myself and wife.

Q. Where did you start from to go to view this land?

A. I think we started from my residence on Thirteenth street.

Q. Who arranged the party with which you went?

A. Mr. Jackson Ownbey.

Q. Did you know who was going to locate you before you started? A. No, I did not.

Q. Did you know what the location fee would be?

A. I ain't certain whether I did or not.

Q. Where did you go, what town did you go to?

A. I didn't go to any.

Q. Where were you located from?

A. I stayed over night at the Half-way House.

Q. What Half-way House?

A. Half way to Idaho City.

Q. Kempner's?

A. No, Half-way House, known as the Half-way House.

Q. Where did you meet Mr. Downs?

A. Met him at Kempner's ranch.

(Testimony of Edward H. Starn.)

Q. How far is that above the Half-way House?

A. It's quite a ways.

Mr. FRASER.—Thirty-five miles.

Mr. GORDON.—Q. Were you located the day you arrived there? A. No, sir.

Q. When were you located?

A. The next day.

Q. And were you all located in a bunch or were you taken out separately from the others?

A. We went together, if I remember right.

Q. How was this land shown you? Was one piece pointed out that you were to locate on?

A. No, sir.

Q. Were you shown over a whole territory of land and asked which piece you would like to have?

A. Not any more than was necessary.

Q. Tell us what happened.

A. I don't know. I don't know much about it either. This has been seven years ago, didn't try to remember.

Q. What was done when you went out to locate on this land, what was said and done by Mr. Downs?

A. Well, we started out from Mr. Kempner's, and I guess we walked five or six miles to find our claims.

Q. And what else happened?

A. I don't think anything happened out of the usual.

Q. Did they ask you along the five or six miles, "does any of this timber suit you," or what? At the end of five miles did they say, "here is a claim;

(Testimony of Edward H. Starn.)

does this suit you”?

A. Yes, they took us to some claims and asked us if it was all right, and we said, “yes, that is all right.”

Q. How many claims did they show you to look over?

A. Four or five.

Q. And there were four or five in the party?

A. I think there were four.

Q. Did he give you a description of that land?

A. Yes, sir.

Q. Did he give it all to one or give each one of you a description?

A. He give mine and my wife’s together.

Q. To you?

A. Yes, sir.

Q. Did you pay him for locating you there, or after you returned?

A. I offered to pay him there, but he said to come and pay his partner.

Q. Who was his partner?

A. I think Mr. Wells.

Q. When did you pay Mr. Wells, with reference to the time you returned?

A. Next day.

Q. Was that before you filed?

A. Yes, sir.

Q. And where did you have this paper prepared that you filed? This typewritten paper?

A. In the Sonna Building.

Q. Who was it that prepared that for you?

A. I don’t remember the name; it was some young lady.

Q. Did you go there yourself?

A. Mr. King at the land office told me that would be a good place to go.

(Testimony of Edward H. Starn.)

Q. Did you pay the young lady?

A. I don't remember that.

Q. How much? A. I don't know.

Q. Five dollars? A. I don't know.

Q. You didn't say anything to Mr. Wells about preparing these papers?

A. No, sir, I had nothing to do with Mr. Wells.

Q. Other than to pay him your \$25?

A. That's all.

Q. At that time did you have the money with which to prove up?

A. I didn't have quite all of it.

Q. Where did you get the money with which you made your final proof?

A. I got some of it from Mr. Stahl and some I had.

Q. How much did you get from Mr. Stahl?

A. \$300.

Q. And how long had you known Mr. Stahl?

A. Quite a while; I couldn't say just how long.

Q. Did you give him a note for it?

A. Yes, sir.

Q. How long before you proved up did you receive it from Mr. Stahl?

A. Not before I had to use it, I guess.

Q. Was it the same day? A. I think so.

Q. The same day you went to the land office?

A. I think so.

Q. Do you remember how much you paid at the land office? A. No, I do not.

Q. And they gave you a receipt at the land office

(Testimony of Edward H. Starn.)

for the money you paid? A. I suppose so.

Q. Now, with whom did you negotiate to sell this property? A. Not anyone.

Q. You must have said something to somebody before they bought it.

A. I don't remember of it.

Q. I mean didn't you talk to anybody about selling it from the time you entered it until the day you sold it? A. No, sir.

Q. Did anybody ever offer to buy it from you?

A. No, sir.

Q. And nobody had ever spoken to you about selling that property from the day you made your application, original entry, until the very day you sold it? A. Not that I remember of.

Q. On that day did you learn that somebody was buying it? A. Yes, sir.

Q. Who did you learn that from?

A. I couldn't tell you that.

Q. To whom did you sell it?

A. Horace Rand.

Q. Is he the gentleman you negotiated with for the sale of it?

A. No, sir, I didn't negotiate with anyone.

Q. Who did you agree to sell it to Mr. Rand with? A. Mr. Kinkaid.

Q. How long had you known Mr. Kinkaid?

A. I can't say that I knew him at all.

Q. Had you ever met him before?

A. Probably had.

Q. Do you know where you met him, or when

(Testimony of Edward H. Starn.)

you met him? A. No, I do not.

Q. Do you know who introduced you to him?

A. No, I do not.

Q. Where did you talk with Mr. Kinkaid about selling your land? A. In his office.

Q. Do you know why it was you went to his office? A. I don't remember why.

Q. Do you remember whether anybody told you that Kinkaid was buying land?

A. I must have heard it, but I don't remember of it.

Q. When you went to Mr. Kinkaid's office what did he say to you about this land?

A. I couldn't tell you that.

Q. What did you say to him?

A. I couldn't tell you that.

Q. Did you tell him you had gone there to sell it?

A. I don't remember of any conversation.

Q. Did he have this deed prepared when you got there? A. I don't think so.

Q. Do you know how long you were in Mr. Kinkaid's office? A. No, I don't.

Q. Do you know whether you asked him how much he was giving for land, or whether he told you how much he would give you for it?

A. I don't remember, I am sure.

Q. Do you know how much he did give you for the land? A. Yes, I know that.

Q. How much? A. \$800.

Q. Was your wife with you at that time?

A. I think so.

(Testimony of Edward H. Starn.)

Q. And you were negotiating for the sale of her property at the same time?

A. We both sold at the same time.

Q. And she went with you that day?

A. I suppose she did.

Q. And you had never been to Mr. Kinkaid's office before?

A. No, sir.

Q. And you had never talked with Mr. Wells about selling this land before?

A. No, sir.

Q. Or Mr. West?

A. No, sir.

Q. Or to Mr. Pritchard?

A. No, sir.

Q. But the two of you went down to Mr. Kinkaid's office and sold the land and signed the deed for it?

A. Yes, sir, we did.

Q. And you don't remember what he said to you?

A. I don't remember any conversation, no; that is too long ago to try to remember.

Q. Now, where did you have—you say you got \$300, as I understood, from Mr. Stahl. Where did you have the rest of this money?

A. Capital State.

Q. And do you know how long you had had that there?

A. No, I don't.

Q. Did you draw it out that morning, the morning you made your proof?

A. Well, I suppose I used it when I proved up, evidently did.

Q. Now, did your wife furnish her own money? Did she prove up at the same time you did?

A. Her money was my money; it was all the same thing.

(Testimony of Edward H. Starn.)

Q. I want to know if the \$300 you got—did you get any for her's too? A. Why, certainly.

Q. How much did you get for her?

A. I got just whatever the claim called for.

Q. I don't mean what you sold it for, but the money it took to prove up.

A. I understand what you mean; it took so much money to buy the claims.

Q. Did you get that for her?

A. I suppose so.

Q. Where did you get it? Did you get that from Mr. Stahl too? A. I got \$300 from Mr. Stahl.

Q. That was for your claim?

A. It wasn't quite enough, I don't expect.

Q. Now, did you get any money anywhere else to give your wife with which to pay for her claim?

A. We had money in the Capital State Bank, yes, sir.

Q. Did you have enough to pay for both claims, with the exception of the \$300 you borrowed from Mr. Stahl?

A. We had enough with the \$300, yes.

Q. To pay for both claims? A. Yes, sir.

Q. Then you drew \$500 from the Capital State Bank? A. I think so.

Q. And do you know how long you had had that money in the Capital State Bank?

A. I do not.

Q. Do you remember whether or not at that time you had an account at the State Bank?

A. I do not.





